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## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 8 December 2003

# Journal des débats (Hansard)

Lundi 8 décembre 2003

Standing committee on  
general government

Organization

Comité permanent des  
affaires gouvernementales

Organisation



Chair: Jean-Marc Lalonde  
Clerk: Tonia Grannum

Président : Jean-Marc Lalonde  
Greffière : Tonia Grannum



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 8 December 2003

Lundi 8 décembre 2003

*The committee met at 1606 in room 151.*

## ELECTION OF CHAIR

**Clerk of the Committee (Ms Tonia Grannum):**

Honourable members, it's my duty to call upon you to elect a Chair. Are there any nominations?

**Mr Ernie Parsons (Prince Edward-Hastings):** I would like to nominate Jean-Marc Lalonde.

**Mr Jerry J. Ouellette (Oshawa):** I would second that nomination.

**Clerk of the Committee:** Are there any further nominations? Seeing no further nominations, I declare Mr Lalonde elected as Chair of the standing committee on general government.

**The Chair (Mr Jean-Marc Lalonde):** First, I'd like to thank the mover and the seconder for their confidence, and all of you people.

## ELECTION OF VICE-CHAIR

**The Chair:** The second item on the agenda: May I have names for the election of Vice-Chair?

**Mr Lou Rinaldi (Northumberland):** I would like to move Mr Dhillon as Vice-Chair.

**The Chair:** Moved by Lou Rinaldi. Seconded by?

**Mrs Maria Van Bommel (Lambton-Kent-Middlesex):** I'll second it.

**The Chair:** I've got to get all the names. Any other nominations? Any nominations, twice? Three times, any nominations? If none, I declare Mr Dhillon as the Vice-Chair of the standing committee on general government. Congratulations.

Just before I proceed with the other items on the agenda, I'd just like to make sure that you people are fully aware of the conflict-of-interest items that appear in the resource binder. If you have any doubt or any questions about conflict of interest, you could contact the Integrity Commissioner at any time, like I just did today on another matter. We get the answers pretty fast from that office.

The other thing I'd like to make you aware of is that the standing committee on general government was created as a result of the 1999 changes to the standing orders. As per standing order 109(b), the standing committee on the Legislative Assembly assigned the following ministries and offices to each committee respectively:

Ministry of Agriculture and Food;  
Ministry of Consumer and Business Services;  
Ministry of Energy;  
Ministry of Enterprise, Opportunity and Innovation;  
Ministry of the Environment;  
Ministry of Finance;  
Ministry of Intergovernmental Affairs;  
Ministry of Labour;  
Management Board of Cabinet;  
Ministry of Municipal Affairs and Housing;  
Ministry of Natural Resources;  
Ministry of Northern Development and Mines;  
Ministry of Tourism and Recreation;  
Ministry of Transportation;  
Office of the Premier;  
Cabinet Office.

I'd like to point out that the mover, or the people that introduced the bill, have the option, at times, to ask that the bill be referred to another standing committee.

## APPOINTMENT OF SUBCOMMITTEE

**The Chair:** The next item I have is that I need a motion to appoint a subcommittee on committee business. Usually there's a chair, a vice-chair and a member.

**Mrs Van Bommel:** I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at the request of any member thereof, to consider and report to the committee on the business of the committee;

That the subcommittee be composed of the following members: the Chair as chair; Mr Leal; and Mr Ouellette, and that the presence of all members of the subcommittee is necessary to constitute a meeting.

**Ms Marilyn Churley (Toronto-Danforth):** May I speak to the motion?

**The Chair:** Definitely. Oh, can I get a mover first?

**Mrs Van Bommel:** I moved that.

**Ms Churley:** I note, without surprise, of course, that my name was left off the list of those appointed to the subcommittee. As has been explained to me, it's because I'm considered an independent and therefore not eligible to sit on the subcommittee. I submit to people that it's in everybody's interest around this table and on this committee to make sure that all three parties are represented on the subcommittee. I don't know if the new members are aware of what the committee does, but the sub-



committee is set up to make sure that we all try to reach a consensus around the committee business; if there are public hearings, to talk about how many days, the dates of travel, all those kinds of things. We try to work in co-operation on that level in a non-partisan way for the benefit of all committee members and the public.

Of course, what will happen if I'm not part of that subcommittee is that I will have no say in any of those things. I understand also, that as a so-called independent—even though the Speaker's recognized us as New Democrats—I will not have, without unanimous consent, the ability to be involved in those invited for any public hearings. So I would like to move that—I don't know if I have to wait or procedurally how to—

**Clerk of the Committee:** You have to wait until—

**Ms Churley:** OK, so let me tell you what I'm going to do for the purposes of this committee. I assume that it has to be done by unanimous consent, that this committee by unanimous consent determine that I, as the New Democrat on the committee, be appointed to the subcommittee for the purposes of making sure that the committee is properly run. I'll be making that sort of motion. I hope that everybody will support it. I think it's in all our interests to have me represented on that subcommittee.

**The Chair:** I remember in the previous year we had an independent member who was allowed to sit according to standing order 111. We made provisions for an independent member on this standing committee. The independent member could be invited to be part of the public hearings that were taking place. I haven't seen before an independent member being part of the subcommittee, though.

**Ms Churley:** If I may, I believe by unanimous consent we can—

**Clerk of the Committee:** I'll just clarify. What we could do by unanimous consent, if it's the committee's wish, is to invite you to attend all subcommittee meetings, but you still couldn't be officially appointed to the subcommittee meeting because that would be against the standing orders, which are the rules of proceeding.

**Ms Churley:** How would you suggest that we do this? As I said, let me guarantee everybody that it is in the interests of each member here that I be involved in every single darn decision around this committee.

**Clerk of the Committee:** I think we should finish with the subcommittee motion, the appointment of the subcommittee on committee business, and then you can ask for unanimous consent to allow you to be invited to all subcommittee meetings.

**Ms Churley:** Invited and a full participant in the subcommittee meetings.

**Clerk of the Committee:** That would go against the standing orders, unfortunately.

**Ms Churley:** Well, OK. So be it. Good luck, Mr Chair.

**The Chair:** Any further discussion on this motion for the establishment of the subcommittee?

If none, in favour?

**Ms Churley:** Could I have a recorded vote, please?

**The Chair:** It's too late. We have proceeded. The recorded vote has to be requested before the vote is put.

Opposed, if any? One abstention? No? Did you vote in favour?

**Mr John Yakabuski (Renfrew-Nipissing-Pembroke):** I didn't get it up, but abstention is fine.

**The Chair:** One abstention. Motion carried, yes.

My next item would be that we have to decide when the subcommittee will be meeting, if you wish, before Christmas. We will probably have one bill to discuss, David Levac's bill. It was referred to the general government committee last week. Do you wish to meet before Christmas?

**Mr Ouellette:** Mr Chair, I would ask that if the subcommittee wanted to sit and discuss it, we could probably discuss it after. That would be my recommendation.

**The Chair:** So you recommend that we meet immediately after this meeting?

**Mr Ouellette:** Yes, just to discuss how we're going to proceed.

**The Chair:** And we will report to the members after? Is that the wish of everyone, that the subcommittee meet immediately? Agreed? Agreed.

Any further discussion?

**Mr Ouellette:** Yes, Mr Chair, I would recommend, with your indulgence, seeing that we've had a recent election and we have a number of new members sitting on the committee who I don't think have had the opportunity to sit in our process before, to my knowledge, that possibly the clerk or their office be able to provide an overview or review for those new members on the committee on how this process works so that they understand where and how things fit together. That would be my recommendation, Mr Chair.

**The Chair:** I fully support this recommendation. Is it possible, Tonia, that we could meet at one point? When would it be?

**Clerk of the Committee:** Yes. Do you mean now or another—

**Mr Ouellette:** That would be for those members who haven't had the opportunity to sit on committee. They could be able to determine with yourselves a time that would be appropriate.

**Clerk of the Committee:** I should just let everybody know that I did send out the resource binder. I hope everybody got that. Yes, please feel free to contact me if you wish to discuss one on one exactly how the committee works and the process.

**The Chair:** Would it not be better to have a half-hour session with you, Tonia, and explain everything to the whole group? There could be some questions arising at that meeting that would clarify some doubt or some questions that people have.

**Clerk of the Committee:** Sure. In the full committee or off the record?

**The Chair:** Off the record.

**Clerk of the Committee:** Sure.

**The Chair:** When can we do that?



**Clerk of the Committee:** We could pick another day. We sit on Mondays and Wednesdays, so we could pick a day that we know we're not actually having a committee meeting, but we can meet instead.

**The Chair:** Could we do it next Monday?

**Mr Ouellette:** As far as I was concerned, it would be incumbent on the members who haven't had the opportunity.

**Clerk of the Committee:** It would be at the time when you'd normally have this committee meeting.

**The Chair:** Around 4 or 4:15.

**Mr Yakabuski:** I'm probably not going to be here next Monday. If it's partly for my benefit, I'm probably not going to be here. My 19 reeves at county council are having their swearing-in, and I think I'm going to be going to that.

**The Chair:** We'll touch base at the subcommittee, and then we'll get back to you people.

**Mr Yakabuski:** But I'll start by reading the book over real good.

**Mr Rinaldi:** Mr Chair, if I could add, I only read it once, but a lot of the information I think the member suggested you have to have orientation for is in this book. I wonder whether instead of scheduling a separate

meeting, maybe at our next regular meeting we could spend five or 10 minutes just to ask questions. I read this, and it's fairly detailed, I believe. I'm not an expert. If there is a test, I fail.

**The Chair:** It's been recommended that probably at the next regular meeting we have a closed session immediately after just to review.

**Clerk of the Committee:** Or before.

**The Chair:** It might be a little tough before, because if they are scheduled at 4 o'clock and people are coming in—we would have a closed session immediately after the meeting. All agreed?

Any other discussion?

**Mr Rinaldi:** We haven't the meeting date, am I right? The subcommittee will do it? OK.

**The Chair:** Any more comments or questions? None? Can we get a mover to adjourn the meeting?

**Mr Parsons:** My light went on, so I'm obviously moving adjournment.

**The Chair:** Seconded by?

**Clerk of the Committee:** We don't need it.

**The Chair:** Thank you very much, and the subcommittee will meet immediately.

*The committee adjourned at 1621.*









# CONTENTS

Monday 8 December 2003

<b>Election of Chair</b> .....	G-1
<b>Election of Vice-Chair</b> .....	G-1
<b>Appointment of subcommittee</b> .....	G-1

## STANDING COMMITTEE ON GENERAL GOVERNMENT

### **Chair / Président**

Mr Jean-Marc Lalonde (Glengarry-Prescott-Russell L)

### **Vice-Chair / Vice-Président**

Mr Vic Dhillon (Brampton West-Mississauga / Brampton-Ouest-Mississauga L)

Ms Marilyn Churley (Toronto-Danforth ND)

Mr Vic Dhillon (Brampton West-Mississauga / Brampton-Ouest-Mississauga L)

Mr Jean-Marc Lalonde (Glengarry-Prescott-Russell L)

Mr Jeff Leal (Peterborough PC)

Mr Jerry J. Ouellette (Oshawa PC)

Mr Ernie Parsons (Prince Edward-Hastings L)

Mr Lou Rinaldi (Northumberland PC)

Mrs Maria Van Bommel (Lambton-Kent-Middlesex L)

Ms Kathleen O. Wynne (Don Valley West / -Ouest L)

Mr John Yakabuski (Renfrew-Nipissing-Pembroke PC)

### **Substitutions / Membres remplaçants**

Mr Bill Mauro (Thunder Bay-Atikokan L)

### **Clerk / Greffière**

Ms Tonia Grannum

### **Staff /Personnel**

Ms Lorraine Luski, research officer, Research and Information Services



G-2

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Legislative Assembly  
of Ontario  
First Session, 38<sup>th</sup> Parliament

Assemblée législative  
de l'Ontario  
Première session, 38<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

**Monday 26 January 2004**

**Standing committee on  
general government**

Health Information  
Protection Act, 2003

**Journal  
des débats  
(Hansard)**

**Lundi 26 janvier 2004**

**Comité permanent des  
affaires gouvernementales**

Loi de 2003 sur la protection  
des renseignements sur la santé



Chair: Jean-Marc Lalonde  
Clerk: Tonia Grannum

Président : Jean-Marc Lalonde  
Greffière : Tonia Grannum



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STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 26 January 2004

Lundi 26 janvier 2004

*The committee met at 1001 in room 151.*

## SUBCOMMITTEE REPORT

**The Vice-Chair (Mr Vic Dhillon):** Good morning, everybody. I'd like to welcome all of you on this snowy Monday morning. The first order of business is the report of the subcommittee on committee business. Will someone please move the subcommittee report.

**Mrs Linda Jeffrey (Brampton Centre):** The subcommittee considered the method of proceeding on Bill 31, An Act to enact and amend various Acts with respect to the protection of health information, and recommends the following. There are 14 parts to it.

1. That the committee meet for the purpose of public hearings on Bill 31 during the week of January 26, 2004, in Toronto; and during the week of February 2, 2004, in Sault Ste Marie, Kingston and London.

2. That the committee meet from 10 am to 12 pm and 1 pm to 4:30 pm. Times are subject to change and based on witness response and travel logistics.

3. That the committee invite the Minister of Health to make a 30-minute presentation before the committee, that ministry staff be available during the minister's presentation, and that the official opposition and the New Democratic Party member be allotted five minutes each to make a statement and/or ask questions.

4. That the committee meet for the purpose of clause-by-clause consideration of Bill 31 the week of February 9, 2004, in Toronto.

5. That amendments to Bill 31 be received by the clerk of the committee by 3 pm on Friday, February 6, 2004.

6. That an advertisement be placed on the OntParl channel, the Legislative Assembly Web site and for one day in the English dailies and the French daily and the English and French weeklies that serve the regions where the committee is holding hearings.

7. That the deadline for those who wish to make an oral presentation on Bill 31 in Toronto during the week of January 26, 2004, be 5 pm on Tuesday, January 20, 2004, and that the deadline for those who wish to make an oral presentation on Bill 31 in Sault Ste Marie, Kingston and London during the week of February 2, 2004, be 5 pm on Tuesday, January 27, 2004.

8. That the clerk provide each caucus with the list of those who have responded to the advertisement and wish to appear in Toronto during the week of January 26,

2004, by 6 pm on Tuesday, January 20, 2004. Each caucus will then provide the clerk with a prioritized list of witnesses to be scheduled by 3 pm on Wednesday, January 21, 2004.

9. That the clerk provide each caucus with a list of those who have responded to the advertisement and wish to appear in Sault Ste Marie, Kingston and London during the week of February 2, 2004, by 6 pm on Tuesday, January 27, 2004. Each caucus will then provide the clerk with a prioritized list of witnesses to be scheduled by 3 pm on Wednesday, January 28, 2004.

10. That, if there are more witnesses wishing to appear than time available, the clerk will consult with the Chair, who will make decisions regarding scheduling.

11. That the deadline for written submissions on Bill 31 be 5 pm on Friday, February 6, 2004.

12. That individuals be offered 15 minutes in which to make their presentations and organizations be offered 20 minutes in which to make their presentations.

13. That the research officer will prepare a summary of witness presentations for the committee by 6 pm on Thursday, February 5, 2004, and that the research officer will prepare a briefing memo on the recent history of the issue of health privacy.

14. Last, but not least, that the clerk of the committee, in consultation with the Chair, be authorized prior to the passage of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

I move adoption, Mr Chair.

**The Vice-Chair:** Shall the report of the subcommittee carry? Carried.

HEALTH INFORMATION  
PROTECTION ACT, 2003LOI DE 2003 SUR LA PROTECTION  
DES RENSEIGNEMENTS SUR LA SANTÉ

Consideration of Bill 31, An Act to enact and amend various Acts with respect to the protection of health information / Projet de loi 31, Loi édictant et modifiant diverses lois en ce qui a trait à la protection des renseignements sur la santé.

**The Vice-Chair:** Next, we have the Minister of Health and Long-Term Care, who is going to be making a 30-minute presentation before the committee.



**Hon George Smitherman (Minister of Health and Long-Term Care):** Thank you very much. [*Failure of sound system*] considers this bill, around which there are divisions and the like. I'd be very keen to be involved in helping to resolve them.

Before I spend some time discussing the details of Bill 31, let me also take a moment to commend all others who will speak to this committee in the coming weeks. Hearings such as this are a vital part of our democracy and are something I take very seriously.

One of the most important aspects of these hearings is the opportunity for us—all of us—to learn. None of us has all the answers. That's certainly true around something like privacy legislation, which is complex. I certainly am not going to pretend to have all of the answers, and I hope over the course of the weeks when these hearings are proceeding, they will provide us with an opportunity to improve and to refine that bill. Let me be absolutely clear in saying that I welcome that input and look forward to it.

Enough of my preamble. Let me spend a few minutes telling you about this bill, the principles which guide it and the values that shaped it.

The bill before the committee is an important part of our commitment to improve and protect Ontario's public health care system, a system which I believe is the very best expression of Canadian values. This is a commitment which the government takes very seriously, and I can assure you it's something that I take very seriously as well. This bill is a central part of that effort.

Specifically, it is a bill to protect the privacy of the personal health information of Ontarians while ensuring that the information is used judiciously to improve health care in our province. Information about our health is extremely sensitive. It's highly personal. It's something people have a right to be protective of. After all, it's their information.

Ontarians deserve health privacy legislation, and health care providers have been asking for health information privacy legislation for some time now. Health providers need clear rules about personal health information to enable them to deliver high-quality health care in every health setting and every situation. We intend to deliver, and this bill does deliver.

1010

Let me also give credit where credit is due. In drafting this legislation, we did not start from scratch. Much important work was done by the previous government, and many of the elements of their bill remain in this current bill.

When it comes to issues like privacy and confidentiality, I believe there is very little room for partisanship. And I'm certainly not embarrassed to say that the previous government's work was extremely valuable to us, and that we have the benefit of a former Minister of Health, in the form of Elizabeth Witmer, who was involved in previous drafting of the legislation.

I also want to thank the stakeholders who have provided important insights and input into the bill. We

really have done quite a lot of work in advance to make this bill a good-quality bill.

Bill 31 would, for the first time ever in Ontario, provide broad legislative protections for the privacy, confidentiality and security of personal health information. It also provides consistent, comprehensive rules governing the collection, use, and disclosure of personal health information. It will codify, in law, many of the current practices and codes of conduct of health care providers in the province of Ontario.

Bill 31 provides individuals with the right of access to their own health information and the right to require correction of their health records where the information is incomplete or inaccurate. And it provides for oversight and enforcement of these rights and effective remedies when these rules are contravened.

Fundamental to the proposed legislation is the guiding principle that personal health information should only be collected, used or disclosed in the most limited way necessary. Furthermore, individual consent will be necessary for such collection, uses and disclosures, except in limited circumstances.

Bill 31 contains two separate components: the Personal Health Information Protection Act, 2003, and the Quality of Care Information Protection Act, 2003.

Let me tell you about the first component: the Personal Health Information Protection Act, 2003.

There has long been a need for privacy protection for personal health information. Ontarians deserve to know that their health care information is secure. With on-line technologies and increasing flows of information in health care, the need for clear rules for personal health information is even more critical. The patient needs to trust that the providers in their circle of care are protecting their personal health information and using it only in limited situations.

In this context, let me also note that the federal privacy legislation, the Personal Information Protection and Electronic Documents Act, PIPEDA, came into force on January 1 of this year and deals with the transfer of personal information in the commercial private sector within the province. But the federal legislation was developed to support and promote electronic commerce. It wasn't developed with our health care system in mind.

Ontario's legislation would apply to the collection, use and disclosure of identifying personal health information by specified "health information custodians," including hospitals, physicians and other health care providers, as well as the Ministry of Health and Long-Term Care.

Our bill allows health care providers to rely on implied consent where personal health information is needed for health care purposes. But the patient must be knowledgeable about how this information will be used.

Patients will now have a legal right to control the disclosure of their personal health information within the circle of care.

Individuals will have the right to expressly state when their personal health information cannot be shared within the circle of health care. This right, known as the



lockbox, was included after careful consideration of the concerns many Ontarians and our health care partners have expressed about the sharing of sensitive personal health information. Patients need to trust that they have control over the disclosure of their personal health information. Public trust is the very foundation of our health privacy legislation.

We've also listened to the concerns of police about public safety. With this new legislation, a doctor may disclose personal health information about a patient, at their discretion, to reduce or eliminate a significant risk of bodily harm to an individual or to the public.

Bill 31 dramatically enhances the powers of the Information and Privacy Commissioner, creating a strong oversight and enforcement mechanism for the act. The commissioner will be responsible for overseeing the legislation and ensuring compliance with it. We will ensure that the commissioner will have the support necessary to carry out this important function.

The legislation will ensure people can have access to their own personal health information, and have the opportunity to correct it when needed.

Where the request for access or correction is refused by the custodian, Bill 31 enables the individual to file a complaint with the Information and Privacy Commissioner.

The bill also contains extremely tough penalties: fines of \$50,000 for individuals and \$250,000 for organizations. These figures were not arrived at lightly. They are there to demonstrate the seriousness of the issue at hand.

Also, where the commissioner has made an order or where a person has been convicted of an offence under the act, an individual who is affected by the order or offence may sue for damages. No other provincial health privacy legislation explicitly provides for this.

Another important component of health information protection is the creation of a secure health data institute. This is an organization at arm's length from government whose information practices and privacy protections have been approved by the Information and Privacy Commissioner.

Where information is required by the ministry for health planning and management, this information would go to a secure data institute. This institute would undertake the required analysis and release it in non-identifiable form to the ministry. Minimal identifiers can be released to the ministry in certain cases, but only if the Information and Privacy Commissioner approves.

To those people concerned about government snooping through their personal data, let me say that I find this idea as objectionable as you do. It will not happen.

Unlike other provinces with health privacy legislation, Ontario's Bill 31 limits the ways that those who receive personal health information from a physician or other custodian may use it—insurers, employers and other organizations, as examples, that are outside of health care. These organizations are subject to restrictions on the use and disclosure of that information. And patients must provide express consent to their doctors before

personal health information is provided to such organizations.

Additionally, personal health information cannot be collected, used or disclosed for fundraising or marketing purposes without a person's express consent. Health information, as I said at the outset, is uniquely sensitive. It is also collected in circumstances of trust and vulnerability. This vulnerability, this power imbalance, should not play any role in fundraising. Of course, individuals are free to indicate that they would like to receive fundraising or marketing requests or materials. Charitable giving, particularly to health care facilities, is to be commended. But it must be consensual.

I would just like to say that I expect you're going to hear quite a lot on this point. What this bill does is restrict the capacity of health care organizations to use the fact that you've been a patient to directly solicit you for financial resources. What this bill does allow—and what I think we will work on amendments to make even clearer to our health care partners—is that you would have the capacity as a health care facility to write to people who have been patients to ask for their express consent around financial solicitation. I believe that this will satisfy the capacity of health care organizations to be able to build support from people to whom they have provided services. But first they must seek their express consent.

We gave this a lot of consideration. We know our health care partners are strained for resources and that it's a challenge. But the use of personal health information for fundraising purposes is an essential principle, and the bill would be compromised if we allowed an exemption for the use of personal health information to our health care partners. We will provide the mechanism for them to ask for the express consent of past patients to be solicited, but the express consent must be gained before people are asked to give money. I think that's a very important point and I think it's something that you will hear quite a lot about.

Now let me turn to the Quality of Care Information Protection Act, 2003, the second part of Bill 31.

The McGuinty government is particularly aware of the need to encourage health professionals to share information and hold open discussions that can lead to improved patient care and safety. That's why Bill 31 has been drafted with protections for quality-of-care information generated by hospital committees that deal with quality improvement.

#### 1020

When a medical error occurs in a hospital or other health care setting, open disclosure and discussion of the facts surrounding the incident are absolutely critical. Without this, the institution will not be able to analyze the root cause or gaps that led to the incident and frankly to direct appropriate measures to make sure it doesn't happen again. Our health providers couldn't identify and implement changes to avoid similar problems in the future if we didn't have a transparent process to gather information.



This legal protection for quality-of-care information is available only if the facts of a medical incident are recorded in the patient's file. The information provided to the quality-of-care committee and the opinions of committee members would be shielded from disclosure in legal proceedings as well as most other disclosures outside the hospital. In this way, we have carefully balanced the need to promote quality care with the need to ensure accountability.

There you have the nuts and bolts of Bill 31. It's a strong bill, it's an effective bill and it will serve the needs of patients as well as of health care providers, giving them for the first time clear and consistent rules for collecting, using, storing and sharing personal health information. Once Bill 31 becomes law, Ontario will have the toughest rules and limits ever on how health information is gathered and used. Indeed, I believe we will have created the gold standard in health information protection in Canada—protection to which all Ontarians are entitled. On this point, I would point out to committee members that this bill, in its draft form, has already gained quite a lot of note and interest from other provinces, which are considering adopting many of the provisions and protections that are contained within it.

I would like to thank you for the work you're about to do and to introduce Carol Appathurai, the acting director of health information privacy and sciences. Also with us today are Halyna Perun and Michael Orr, both legal counsel from the legal services branch of the Ministry of Health and Long-Term Care, and my legislative assistant, Abid Malik. Each of these four individuals will be available to you for all the days the committee is sitting here in Toronto and also on the road. I would encourage you to work with our staff. We need your help to make sure the bill we eventually take forward to the Legislature for passage is a bill that enjoys the support of all members of the Ontario Legislature. That's my goal, and I'm very keen to work with you to try to achieve a piece of legislation of which we can be proud that Ontarians have been appropriately protected.

**The Vice-Chair:** Thank you, Minister, for your presentation. Now we're going to hear from the official opposition for five minutes.

**Mrs Elizabeth Witmer (Kitchener-Waterloo):** Thank you very much, Minister Smitherman. We do appreciate the work that's gone into the preparation of this act. We've been at it for a long time, and hopefully this time we'll get it all right.

I do have a question, and I have to go back to Bill 8, because Bill 8 also contained privacy provisions, as you know, and was introduced before Bill 31, which actually allowed you to collect, use and disclose personal information. I'd like to know how this bill relates to Bill 8 and, if that is now insignificant, why those portions were not withdrawn from Bill 8?

**Hon Mr Smitherman:** It's an excellent question and one we had the opportunity to discuss previously. What will be clear in this piece of legislation is the supremacy of this piece of legislation as it relates to privacy. If a

strengthening amendment on that point is necessary with this bill, and when Bill 8 goes to committee and amendments are considered, we'll take the necessary steps to make absolutely clear and remove any doubt there might be around where the supremacy lies. This is the bill that offers those protections, and we'll make sure that amendments clearly demonstrate the supremacy on that point. You've been helpful in making sure we've got that hierarchy, if you will, appropriately positioned.

**Mrs Witmer:** Are you saying, then, that the sections that constitute fundamental breaches of privacy rights will be totally removed from Bill 8?

**Hon Mr Smitherman:** Well, I need to take a look at the language that's necessary to accomplish the goal we both support, which is making sure that Bill 31 is the place where the paramountcy of privacy is clearly captured and the supremacy of the legislation is established. If you have suggestions around the best way to accomplish that from a language standpoint, that would be very helpful and I'm happy to work that out with you. I'm not sure that I've seen drafting about how we intend to accomplish it, but the goal has been established and the commitment is made.

**Mrs Witmer:** Right, because I know there were a lot of stakeholders who did ask for that section of Bill 8 to be immediately withdrawn. I was surprised that hadn't happened—I think they were too—if the intent is that Bill 31 would have precedence. Are you saying now that this bill has precedence over all the federal legislation, or exactly what?

**Hon Mr Smitherman:** Carol can strengthen my comment, but the federal legislation that currently has some effect on some health care providers who are deemed to be commercial—I was in a dental practice last week, where I had been referred from my dentist, and signed a consent form that is part of PHIPA, but it really applies only to the commercial elements of the sector.

What we understand from discussions with federal colleagues and the federal information and privacy commissioners—I think there's language in PHIPA; help me, Carol, with the language.

**Ms Carol Appathurai:** "Substantially."

**Hon Mr Smitherman:** Substantially similar. All the indications we've received so far from the federal government are that this piece of legislation meets the test and will work appropriately with the federal legislation that's there.

Carol will be available for more questioning afterwards, in case you have other questions you would like me to answer more particularly, because your time is—

**Mrs Witmer:** Right. It sounds to me that you're prepared to make sure that at the end of the day the stakeholders can continue to move forward.

**Hon Mr Smitherman:** Absolutely, and we have lots of subsequent dialogue with stakeholders to improve this as we move forward.

**Mrs Witmer:** The other issue that I've heard may present some concern—and it's been touched on—is the barriers that may be here to accessing information for



research. I think that's certainly going to be one of the more contentious issues.

**Hon Mr Smitherman:** What we put in place here—and I hope at the end of the day it doesn't stand as an undue barrier—is that process is required. Our first goal is the protection of privacy of the information of Ontarians. That's our starting point. From there, once we've established that, we look to put in place the appropriate process or mechanism that will still allow the important research and planning information that comes from that data to be available.

We think what we have outlined here does offer those appropriate protections to Ontarians, dramatically ramping up the roll of the Information and Privacy Commissioner as the arbiter around the appropriateness and then establishing the principle of data institutes, which would be reputable organizations that have also had sign-off from the Information and Privacy Commissioner. I think it's a process that balances the need to be able to collect and use the information for health planning and research purposes, but only in a context of the paramountcy of the need to protect the privacy of Ontarians related to their personal health information. I think we've got the balance right there.

**The Vice-Chair:** Now we'll hear from the third party.

**Ms Shelley Martel (Nickel Belt):** Thanks, Minister, for being here today. I appreciate that you take the time out of your schedule to come and go through this. I have two questions, and then I want to make a statement. The first has to do with the last part of the bill, the regulation-making section. Because so much of this is done through regulation—so many other bills are a shell, and the rest is done in so many ways behind closed doors—I appreciate that there are many opportunities for public consultation.

The part that gave me concern has to do with your own discretion not to have consultation. The criteria for that are listed: either an emergency or it's a minor amendment or it's going to be replaced by something else. The part that gave me concern, though, is that any decision you make in that regard is not a decision that can be reviewed by the commissioner. If the commissioner has oversight of the legislation and if the areas where you are not going to have public consultation are essentially quite legitimate, I think it doesn't give a good indication or a good impression that there are going to be some decisions that are not able to be reviewed either by a court, in this case, or by the commissioner—especially the commissioner.

I may be reading this wrong, because Carol is shaking her head, but what bothered me was on page 66 where it said "no review." My assumption was no review of a decision not to hold public consultation. If you can get away from that, you'd be much better off.

1030

**Hon Mr Smitherman:** I would say first, just on a point of principle with respect to regulation and consultation around that, because I do think this bill is an essential foundation for our health care system, it would be my intention to maintain a very high level of consultation all through the process. We've enjoyed it cer-

tainly in the stages that have brought us to this point now. So I would just give you that as my commitment, as my undertaking. I think Carol could perhaps help by commenting more particularly on the intent of the sections that you spoke about.

**Ms Appathurai:** If I understand your question correctly, there is an opportunity for regulations to be put through in an urgent situation. My voice isn't carrying very well. Those regulations are temporary. They will only last for two years, and within two years you have to go through the full process of public review.

**Ms Martel:** I think I understand that, but my concern is that if it's a legitimate, urgent situation and the minister would post that and it's posted through the gazette, I'm not sure that you'd need to officially state that the commissioner can't review that. I think that just works at cross-purposes with what is going to be her role, which is essentially oversight. It would give the impression that there might be something to hide. If there's a way that you can get around that, where you don't have to have that, then I just think no one can ever come back and say that something underhanded was being done. I understand the temporary nature of it, but the fact that in the legislation it still says there can't be a review, not only by the court but by the commissioner who has oversight, just takes you down a road where I don't think you really want to go.

**Ms Appathurai:** We welcome that suggestion, and we'll go back and look at that.

**Hon Mr Smitherman:** We want to fine-tune things in a way that makes sure it lives up to the goals we've established.

**Ms Martel:** More generally, we were told at the briefing on Friday that similar legislation is in place in Manitoba, Saskatchewan and Alberta. I think you've given us two indications today where Ontario's legislation is different—ie, we have a right to allow people to sue, with a cap on that; and there was a second area, I think limits in the ways that organizations can use private health information. Are there other things that the other jurisdictions are doing that we should look at? Did you have a full review of what they're doing and its application to Ontario?

**Ms Appathurai:** Yes.

**Ms Martel:** OK.

**Hon Mr Smitherman:** The bill would contain some things that in some areas other provinces are looking to Ontario's legislation as being superior, but the implied consent place is I think one where we've determined that within the circle of care, that traditional circle of care that people receive most of their care in, that the status quo of implied consent was the appropriate way to go, and it's a point of distinction with some other jurisdictions.

**Ms Martel:** OK. Just one final thing, if I might. The quality of care comes as a separate bill. Is that the same in the other jurisdictions, as well, those issues are dealt with separately in separate legislation?

**Ms Appathurai:** In other jurisdictions except for Quebec, those protections are all in the Evidence Act. Ontario has chosen to do it this way.



**Ms Martel:** Thank you.

**The Vice-Chair:** Thank you, Minister, for taking the time and coming before us.

**Hon Mr Smitherman:** That's it? I get to go? All right. Many thanks.

**The Vice-Chair:** Next, we're going to have a briefing from the Ministry of Health and Long-Term Care.

**Ms Appathurai:** I'd like to thank you all for the opportunity to be here today. With me are Halyna Perun and Michael Orr, counsel with the legal services branch. You should have in front of you your binder. Can you hear me, more or less?

**Mr Jerry J. Ouellette (Oshawa):** Not so close to the mike.

**Ms Appathurai:** Not so close? Better? Good.

You should have in front of you a binder. Tab 1 should be a copy of the legislation. At tab 2 you'll find the compendium, which is a shorter version of the legislation, but very dense. Tab 3 is a slide presentation that is in slide form, fairly high-level—the key provisions of the act. Tab 4 should be your background, tab 5 a news release, and you should have in tab 6 a complementary amendment chart. If you don't have that, I do have extra copies here.

**The Vice-Chair:** If I could just interrupt, Ms Appathurai. How would you like us to handle questions? Can we have the members jump in? Should we do a rotation?

**Ms Appathurai:** I think it might be best to just jump in. We'd like to clarify the issues at the moment that they come up. However, we will have to keep moving, because I understand we only have about an hour, an hour and a half.

**The Vice-Chair:** Is that agreeable? OK, you can continue.

**Ms Appathurai:** I'll begin the presentation by giving you a little bit of the context, a little bit of the background. At the federal level, there is privacy legislation, as the minister mentioned. This is privacy legislation developed in order to promote electronic commerce, inadvertently capturing aspects of the health care sector, those who are commercial in nature. Those have been identified by the federal government as physicians, pharmacists and laboratories. The result of this federal legislation would be that you would have one part of the health care sector under one set of rules and other parts of the health care sector under different rules and requirements. This would make integration very difficult. As well, in the federal legislation there was a need for express consent, which health care providers have indicated to us would have been very onerous, both financially and in terms of human resources.

At the federal level, the bill sets out that if provincial legislation is found to be substantially similar, the federal legislation will not apply. Ontario has heard from its stakeholders who have asked for made-in-Ontario legislation to meet the needs of the Ontario health care system. They have pointed to Manitoba, Alberta and Saskatchewan, who have all had health privacy legislation in place for some time.

I can go over a little bit of the history. I think if you go back as far as 1980, Justice Krever, in his report in 1980, had very strong recommendations about the need for health privacy legislation in the province. Many attempts have been made. There have been many consultations. The most recent were in 1997-98 and again in 2000. So we really have a fair knowledge base on which to build this legislation.

I'd ask you to turn to your bill. You'll notice at the beginning that there are two schedules: the Personal Health Information Protection Act; and schedule B, the Quality of Care Information Protection Act. Those are currently schedules of one bill, but on proclamation they will be two separate pieces of legislation. We'll take you through both of them.

Underlying the privacy legislation are 10 principles. These are principles set out in the Canadian Standards Association model code for the protection of personal information. These are principles that underlie the federal legislation as well. As we think about being substantially similar, we have ensured that these 10 principles moulded the development of our legislation. You'll see them as we move through the various sections of the legislation.

1040

The principles are: accountability; ensuring that the purpose for which information is collected, used and disclosed is identified; the need for consent; the need to limit collection; the need to limit use, disclosure and retention to only that which is necessary; to ensure accuracy in medical records; to ensure there are safeguards to protect the privacy and the security of those records; to ensure there's openness and transparency in how that information is used; to ensure that individuals have access to their files and to their information; and to ensure that there is strong oversight and the ability to challenge non-compliance with the legislation.

The legislation will apply to health information custodians who collect, use and disclose personal health information. It will also apply to non-health information custodians where they receive personal health information from a health information custodian.

**The Vice-Chair:** Question?

**Mr Ouellette:** For the information and protection of it, is it advanced enough to take care of DNA coding, which is one of the new technologies coming forward? I know the other jurisdictions have not had this consideration in the past, but with it being able to tell through DNA whether somebody is bound for cancer of a particular type, is that protection written in the legislation?

**Ms Appathurai:** Yes, and that is actually a very important issue. We've had that raised. We do have a regulation which will allow us to define and put protections around that information. It's an ever-changing field, and we don't want to put anything in the legislation that cements it in. We want to be able to adjust as new information comes forward and as information changes.

What we have heard in the field—there's still a debate—is that there are physicians in the field who think



that your DNA information is no different from any other piece of health information in your file and doesn't need any more protection. There are others—Maureen McTeer, who's a lawyer, who's spoken on this—who suggest that it is very unique and does require special protection. So right now, we're looking at what other jurisdictions are doing, but we've ensured that we have the ability to put restrictions around this, a definition around this, through the regulations.

**Mr Ouellette:** Does that keep the DNA strictly in the ministry's file, as opposed to coming forward through, say, science and technology, so it could be found through another ministry?

**Ms Appathurai:** Where? Yes. And we'd have a recipient rule that would cover that.

**Mr Ouellette:** So this will apply to ministries, or does it just pertain to medical uses?

**Ms Appathurai:** It would apply to those who receive that information from health information custodians.

**Mr Ouellette:** So it could be effectively utilized within other ministries, whether it's science and technology, for example?

**Ms Appathurai:** It could be, yes.

**Mr Ouellette:** OK. Thank you.

**Ms Halyna Perun:** One of the things I'd like to do is ask you to look at the index to schedule A, which is on page 2 of your legislation.

Just to give you the lay of the land before we get into the details of what the act contains, as it's important to note what all the parts say, there are eight parts—it's on page 2 of the legislation—to schedule A, the Health Information Protection Act.

The first part pertains to purposes and sets out the definitions. Here, we have the key definitions as to what a health information custodian is, who this act applies to, what personal health information is, and what we mean when we say "personal health information."

The next part—and we will go through the key definitions with you; I just wanted to show you what the parts say—deals with practices to protect personal health information. Here, you will see rules around information practices, the accuracy and security of personal health information, the obligation of custodians to ensure that they have a contact person—they have a written public statement and a statement around the responsibility of a custodian for those who work for the organization. That's set out in part II.

Part III, then, deals with consent concerning personal health information, and here you will see set out the elements of consent. When we say "consent," what does that mean in the context of this bill? There are rules with respect to the withdrawal of consent, as well as the assumption of validity of consent.

Because we are dealing with health care and in the health care context there are often people who are incapable of providing consent to the issues pertaining to them, part III also provides rules as to whom you go to as a provider if someone is incapable of consenting or, in the case where a person has died, who can decide on behalf of that situation.

Part IV sets out the rules around collection, use and disclosure of personal health information. First, we have a category that pertains to general limitations and requirements. We speak about a general limiting principle, and that is set out in this part. The requirement for consent generally and exceptions to that rule for consent are set out in part IV. The part speaks to collection without consent, uses without consent, as well as disclosures in specified circumstances as set out in sections 37 through 48.

The next part is access to your own record. If you as a patient or client wish to obtain formal access to your record from a provider, part V spells out the rules as to how this can be done. As well, part V speaks to correction.

Part VI, administration and enforcement: This is where you will see the powers and obligations of the Information and Privacy Commissioner and the individual's right to make a complaint about information practice problems with respect to the organization. So here in part VI there are a number of provisions that pertain to that. As well in this part are general powers of the commissioner and also immunity.

Part VII is sort of a general part that sets out a rule with respect to whistle-blowing, immunity, offences, as well as regulations and the public consultation process with respect to the regulations.

In part VIII there are a number of complementary amendments that are proposed to be made to bring the acts in line with Bill 31. Particularly, the approach taken in this legislation is that where there is a need to specify that a certain section of a certain act prevails over this legislation, the amendment is made in that specific act, because it's more relevant to the users of the legislation. There is a chart in your materials that actually shows you what is the current provision and what is the proposed amendment. We'll be happy to go through that with you in time as we go through the next few days.

Going back to the beginning, who is covered by this legislation? That is set out in the definition of "health information custodian," and that definition is found on page 9 of the legislation. You will see here that the proposal is to have this act apply to a health care practitioner. "Health care practitioner" then also has its own definition, and that is set out on page 7, at the top. So the act applies to the regulated health professions; naturopaths under the Drugless Practitioners Act; social workers who provide health care and are regulated by the Ontario College of Social Workers. As well there is a general category, "any other person whose primary function is to provide health care for payment." That could cover acupuncturists, for example.

**The Vice-Chair:** Question, Ms Wynne?

**Ms Kathleen O. Wynne (Don Valley West):** If it's OK to jump in. I think we're going to be asked to look at expanding that definition in these hearings, or certainly of the custodian. You're just talking about the practitioner at this point.

**Ms Perun:** Right.



**Ms Wynne:** But there is a question about the definition of "custodian" that we're going to be asked, so can you talk about how you came to the definition that's in the act?

**Ms Perun:** Sure. A health care practitioner is a custodian, because that comes up in the first category. Then there are a number of other organizations that will be subject to this legislation, and they are set out; for example, service providers, hospitals, institutions that are nursing homes and homes for the aged and the like, pharmacies, labs, ambulance service, homes for special care, and "a centre, program or service for community health or mental health whose primary purpose is the provision of health care." Those are all custodians. Those are more traditional entities that provide health care. And there's a definition of health care as well that's important to note.

1050

Then on the next page you'll also see that the act applies to the minister together with the Ministry of Health and Long-Term Care, medical officers of health, and then there is this last category, which is "any other person prescribed as a ... custodian if the person has custody or control of personal health information as a result of or in connection with performing prescribed powers" or duties. So therefore there is an ability to expand the application of this legislation to others who are not listed in the main but can be set out by way of regulation. We've heard for example that Cancer Care Ontario may want to be a custodian; there are other entities that would say this legislation should apply to them, and that certainly can be done by way of regulation.

**Ms Wynne:** I guess what I'm asking is, what are the principles, the criteria that will come to bear in making that decision in paragraph 7 of section 3? Where are those criteria embodied? Where do we find them?

**Ms Appathurai:** We are developing those criteria.

**Ms Wynne:** OK.

**Ms Appathurai:** But we're certainly looking at individuals who provide health care or who are registries, but we will be working to develop criteria for that.

**Ms Wynne:** OK.

**Mr Ouellette:** You mentioned individuals who provide health care. For example, if a family practitioner practises out of a clinic, I'm concerned about the storage of the information. Who would have the responsibility? Would it be the individual practitioner or would it be the clinic? And who would have the accountability for any loss of information or information that is released inadvertently? Would it be the practitioner? Would they have the ability to contract other individuals for security reasons to protect that information?

**Ms Perun:** The person who is responsible is the person who—for example, in a partnership it would be all three individuals. Say there are three partners; each person would be responsible for the—

**Mr Ouellette:** Storage and protection?

**Ms Perun:** —storage or the collection in accordance with the rules as set out in this act. For example, part II,

which pertains to practices to protect, spells out specifically the obligations of the custodian, which we will take you through.

**Mr Ouellette:** What sorts of penalties are there for loss of information or for information that's released inadvertently?

**Ms Perun:** There are penalties as well. That's also set out in the proposed legislation. First of all, the privacy commissioner can review the practices and can order compliance with the legislation. In addition, if there is an offence, then the individual penalties are—I'll have to take a look.

**Mr Michael Orr:** While Halyna is taking a look, perhaps I could just mention that there are immunity provisions. Mr Ouellette, you asked about inadvertent disclosures.

**Mr Ouellette:** Yes.

**Mr Orr:** And there are immunity provisions which protect health information custodians from liability where they have acted in good faith and reasonably in the circumstances.

**Ms Perun:** Then, if the person is found guilty of an offence, the fines are set at \$50,000 for an individual, up to \$50,000, and for a corporation the fine is up to \$250,000. That's set out on page 62 of the bill.

**Mrs Witmer:** Just proceeding down that road, what are the consequences for the Minister of Health if there is information that is disclosed?

**Ms Perun:** The same provisions apply to the minister as the—

**Mrs Witmer:** The same financial penalty?

**Ms Perun:** That's right—as they do to others who breach the legislation, the way it's set out now.

**Mrs Witmer:** Is it anticipated that this could become quite lucrative for people in the legal field as people start to challenge the custodians in future and say that their information, for example, has been disclosed inappropriately? Are you anticipating that this will create a whole new area of expertise for lawyers?

**Ms Appathurai:** That's not been the case in other jurisdictions.

**Ms Perun:** The other definition that's critical to this bill is that of personal health information itself, and that is set out—

**Ms Martel:** My apologies. I was waiting to see where you were going. I am clear about who is going to be a custodian. I was unclear about the exception, though, which follows on page 10. I just found the language confusing. Are you essentially referring to, for example, in a laboratory, staff in a laboratory; in a physician's office, staff in a physician's office? Is that what the exception—

**Ms Perun:** Right. The exception works in this way: A health care practitioner, say a doctor who is running her own practice, is the health information custodian, but the doctor goes to the hospital and for example works in a clinic in the hospital but it's run by the hospital. Then the doctor becomes an agent of the hospital. The doctor becomes an agent of the hospital for the purposes of that information in the hospital. That's the exception. There's



always someone who is responsible. The hospital is responsible for all the health care practitioners who work within it. As well, the doctor is responsible for his or her own staff in the office. But the doctor can also be an agent of someone else.

**Ms Martel:** Can a staff person be an agent in a physician's office?

**Ms Perun:** Yes, and therefore—

**Ms Martel:** All the requirements apply to the agent.

**Ms Perun:** That's right, and the agent is only allowed to do what the doctor is permitted to do and it's in the course of duties with the doctor. That is set out in section 17 of the draft. So there's actually a rule that tries to encompass the responsibilities of all those who work within the organization. The definition of "agent" is an expansive definition. It includes students, it would include volunteers; it is all of those who work within a custodian.

Should I go on to personal health information as a critical definition? That is set out at page 12. "Personal health information ... means identifying information about an individual in oral or recorded form" and "relates to the physical or mental health of the individual, including information that consists of the medical history of the individual's family." So when I go to the doctor and tell the doctor information about my mother, that becomes my information in my file. It "relates to the providing of health care to the individual, is a plan of service ... relates to payments," donations by the individual of body parts or bodily substances, "the individual's health number," and this is important to know, because even just the number itself is personal health information under this proposed bill. As a result too, because we are proposing rules that govern the collection, use and disclosure of the health number, there is an act in Ontario called the Health Cards and Numbers Control Act that will be repealed consequential to the implementation of these rules under this legislation.

The other definition that I would like to note is that of health care and what is meant by health care. That is set out on page 6. It "means any observation, examination, assessment, care, service or procedure that is done for a health-rated purpose ... is carried out or provided to diagnose, treat or maintain an individual's physical or mental condition, is carried out or provided to prevent disease or injury or to promote health ... for palliative care," and it includes compounding a drug as well as a community service under the Long-Term Care Act.

There is also a provision, on page 15, that sets out a rule which provides that, "In the event of a conflict between a provision of this act or its regulations and a provision of any other act or its regulations, this act" prevails "unless this act, its regulations or the other act specifically provide otherwise," which leads us into a number of complementary amendments that are proposed.

Section 8 of the legislation provides a rule around the Ministry of Health and other custodians, such as boards of health, that are currently Freedom of Information and

Protection of Privacy Act institutions, under that particular act. The bill provides that the ministry with respect to its personal health information will be subject to this act, but with respect to other information, for example purely financial information or general information, will be subject still to the FIPPA legislation. You will see this coming up in a number of other ways in the legislation, where there is a need to make sure that the interplay between the two acts still works for institutions that are subject to both acts. So some of these sections seem to be a little bit cumbersome, but we will be happy to explain them to you in time.

Now we're on to practices to protect.

#### 1100

**Ms Appathurai:** Yes. That's section 10, on page 16. This is part of the openness and transparency that we talked about earlier. Information custodians are required to have in place information practices that comply, that are consistent with this act. In the case where they use electronic means, as we move toward the electronic health record, we wanted to have an acknowledgement upfront in the legislation that that means of collection, use and disclosure may need particular protections. So we've given ourselves the ability to do that under subsection 10(3). We have the ability to prescribe requirements there.

The health information custodian who uses personal health information has to ensure that the information is accurate and up to date for the purposes for which it is being used. The same applies when he discloses that information. He or she needs to ensure that the information is kept securely and, where there is a loss or unauthorized access, that information needs to be transferred to the owner of the file. The owner of the file needs to be aware of that.

Security, you can see in section 13, is a very strong theme all the way through the legislation.

Section 14: We've looked at records that are kept in an individual's home, and as we move to home care that is more and more the case. We want to be sure there's a recognition that those files cannot just be left around, that there have to be some constraints on their use and disclosure.

**The Vice-Chair:** We have a question.

**Mrs Witmer:** We're talking about electronic means here. What about print, filing cabinets? You have cleaning staff or others coming into a health practitioner's office. Is the health practitioner under the obligation to keep those filing cabinets locked?

**Ms Appathurai:** Yes. You can see in section 12 we talk about security.

**Mrs Witmer:** Is that what it specifically means?

**Ms Appathurai:** Yes, to control "against unauthorized use or disclosure" and ensure the information is "protected against unauthorized copying, modification or destruction."

**Mrs Witmer:** Right, but it doesn't say that.

**Ms Appathurai:** Yes.



**Mrs Witmer:** I mean, how are you planning to communicate to people as to what their responsibilities are?

**Ms Appathurai:** That's very important. We are planning to have a fairly comprehensive education program. We've already started talking to various stakeholders about that, and they are, by and large, all onside. The OMA and the OHA have already started developing information packages, but we will be doing that as well.

I just draw your attention to section 13 as well, where we talk about ensuring that the records "are retained, transferred and disposed of in a secure manner and in accordance with the prescribed requirements." So we do have the ability there, too, to add more requirements or to make any clarifications. I think your question is a good one. We have to ensure that all health information custodians understand that they cannot leave their files around the office, and if it's not clear, we'll make that clear.

**Mrs Witmer:** Right. I'm not saying they are left around the office, but I'm saying they are in filing cabinets, and I don't think all individuals have their filing cabinets under lock and key at the present time.

**Ms Appathurai:** Right.

**Mr Orr:** I would just add, if I could, under section 10 there is a specific ability that Carol mentioned to prescribe information practices that all custodians or some custodians must comply with. So you have the general standard in section 12 which ensures that generally everything is covered and they must all ensure that the information is kept secure. It's envisioned that there may be a need for supplementary and more specific rules to really tell people exactly what they have to do in various different situations, and in this kind of situation you have to keep it locked or whatever other kind of method may be necessary to provide that security. So there is the ability to prescribe those kinds of standards.

**Ms Martel:** Just in that respect, some of this material is going to be required. If you go to subsection (2), which talks about a loss and the responsibility of the custodian to advise if information is lost, if you're in an office and your files are stolen and all you have is paper files, there's clearly a problem about whom you inform. You have no clue whose information was taken in the first place. I'm assuming there are a fair number of offices that still work with paper and not so much electronic material. Has that been raised?

**Ms Appathurai:** No, that hasn't been raised, but you will notice in subsection (2) "at the first reasonable opportunity," so there is a reasonableness issue there. But, yes, it's a good point, and we'll see if we can't clarify that.

**Mr Ouellette:** What happens with current files that are found outside the medical profession, such as, for example, the insurance industry? I'm sure they are going to be posturing for information on soft tissue damage and things like that. Are there going to be controls found on the information that's there?

On top of that, what takes place in the case of a practice where somebody retires and passes the information

on? Who then controls and has the information in-house, and what is the process for passing that on and the responsibility for the gathered information?

**Ms Appathurai:** In terms of the insurance companies, they are commercial entities and will be covered by the federal privacy legislation. We do have provisions in the act for health information custodians who have died and the transfer of that information. I'll let Halyna speak to that in more detail, but there are strict provisions around there to ensure that even when a custodian dies, there will be someone responsible for that information.

**Ms Perun:** With respect to insurance, once the insurer obtains information from, say, a provider under this legislation, with consent of the patient, it goes to the insurance company. There is a recipient rule that is quite critical to this legislation as well, and that is set out in section 47 of the bill. That rule provides that if you as an insurer receive the information, you can only do with it whatever the purpose was for which you received it unless some other law specifies that you can do something else with it. That's where the federal privacy legislation will be important as to what the insurers can or cannot do. In addition, certain other requirements can be prescribed under the provisions of this bill. So there is a proposition to put limits on information even when it leaves the traditional health care sector.

This idea is somewhat different in Ontario than in other provinces, because other provinces don't have these kinds of recipient rules. They don't speak to what happens once the information leaves with consent. So that is quite unique in this proposal.

With respect to the transfer of information to the next person, we have a proposal in section 41 that speaks to what happens when the custodian sells his or her practice and a successor receives it, what the duties of the custodian are. So there are rules that speak to these issues in this bill.

**The Vice-Chair:** Next we have a question from Ms Van Bommel.

**Mrs Maria Van Bommel (Lambton-Kent-Middlesex):** I would like to know what authority or jurisdiction this act has over the transfer of health information inter-provincially or even internationally, because a lot of people do that now as they move about. We're much more transient than we were. When it happens, can we limit and protect the privacy of the individuals once it leaves our jurisdiction, or when information comes into our jurisdiction?

1110

**Ms Perun:** The legislation speaks to its own borders, in a sense. It can regulate what custodians and others who reside in Ontario can or cannot do with the information. However, once it leaves our borders, that is not something within the competence of the Legislature to speak to. But there are rules that also provide some guidance, clarity, as to in what circumstances you may disclose information outside Ontario, and there are specific provisions around that.

**Ms Appathurai:** If you turn to page 17, we're looking at the accountability and openness section. I'm conscious



of the time; I'll go over this very quickly. We are requiring that every health information custodian designates a contact person so that the public will know where to go when they have a concern or a request or a complaint. The functions of the contact person are to ensure that there is the custodian's compliance with the act, ensure that all custodians are informed of their duties, respond to requests from individuals for access or correction, and receive complaints from the public.

The health information custodian is required to inform members of the public of his information practices, and that has to be either in a brochure form or a notice on the wall. It has to be easily accessible to individuals so that they know what protections are in place and what uses their information is being put to.

What has to be in the written statement that is provided by the health information custodian we've set out here in the legislation. It has to provide a general description of the custodian's information practices, how to contact the contact person, how to obtain access or request correction, and how to make a complaint to the Information and Privacy Commissioner if you're not satisfied.

Again around information practices, if you look at subsection 16(2) the health information custodian that uses or discloses information about an individual, without that individual's consent, has to inform the individual of this, has to make a note of the uses and has to keep those notes as part of the record. This is part of the openness principle that pervades the federal legislation as well as our own.

You'll see in section 17 the point that we made earlier, that custodians are responsible for the actions of their agents. Whether it's a volunteer working in a hospital or an information manager that you've hired to transcribe your records, ultimately, the custodian is responsible.

**Ms Perun:** Part III pertains to consent concerning personal health information, but before I walk you through that part it's important to note section 28, which actually resides in part IV, at the top. That section and the principle of this legislation is such that the custodian cannot collect, use or disclose personal health information unless the custodian has consent of the individual or this act permits the collection, use and disclosure without consent. That is set out in part IV. So when we mean consent, what do we mean by "consent" under this bill? That is then set out in section 18, on page 19: "If this act"—or also another act—"requires ... consent..." So here again, the bill proposes to stretch just that much beyond and basically regulate. Where another act speaks to the custodian and says you need consent, these rules will apply. The consent must be of the individual, must be knowledgeable, must relate to the information and must not be obtained through deception or coercion.

Consent may be implied or express, but in certain circumstances it has to be express. As the minister mentioned, and again I'll turn to part IV, there are two specific provisions for express consent: section 31, on page 26, pertaining to fundraising, as well as for market-

ing, also on page 26 at section 32. Then, the general rule around express consent is set out in subsection 18(3), on page 19. Essentially, a custodian, when obtaining consent for the transfer of health information to someone who is outside, is not a health information custodian, or if it's not for health care purposes—the consent must be express.

Within the health care circle, consent may be implied. That is set out in subsection 20(2), on page 20. Essentially, this provision says that a health information custodian who is a health care provider who receives personal health information about an individual from the individual, the substitute decision-maker or from another custodian for the purpose of providing health care or assisting in the provision of health care is entitled to assume that he or she has implied consent for this use, unless of course the individual has stated that such information shall not be used for the purpose of health care. If that occurs, then there is the obligation on the part of the custodian to make a note on the file—at least to flag that there is something missing from the information that may be important for the health care of the individual.

Consent to a collection, use or disclosure must be knowledgeable. The act proposes to set out a rule as to what "knowledgeable" is. That is set out at the top of page 20. "Knowledgeable" means that the individual knows the purposes of the collection, use or disclosure, as the case may be, and that the individual may provide or withhold consent. Also, it may be reasonable to infer knowledge by having a notice posted in your office that sets out the uses and purposes of the information. If it's reasonable to conclude that that information has come to the attention of the individual, the health care provider may rely on such notice to conclude that the individual is knowledgeable. That is set out in subsection 18(5), on page 20.

Subsection 20(1) also provides an important rule, in that a "custodian who has obtained an individual's consent to a collection, use or disclosure of personal health information about the individual ... is entitled to assume that the consent fulfills the requirements of this act and the individual has not withdrawn it, unless it is not reasonable to assume so."

On pages 21 and following, there are rules around capacity and substitute decision-making. In a nutshell, the law flows from a law that's currently in place in Ontario, the Health Care Consent Act. That act, however, doesn't deal with information flows; it deals with issues pertaining to treatment, generally. So here, the rules are proposed to be similar to the Health Care Consent Act rules. Essentially, how it would work is that if an individual has been found to be incapable for health care under that act and has what's known as a substitute decision-maker, who makes decisions on that person's behalf, that individual will have an ability to make the decisions around the information ancillary to the treatment under this legislation. There's a way to determine incapacity, and the person will also have the



ability to go to a consent incapacity board for a review of the finding of incapacity.

1120

The act also sets out rules as to who can decide on behalf of someone else. The persons who may consent are set out in section 23, on page 22. The authority of the substitute decision-maker is set out on page 23 at section 24; the substitute can take a step or make a decision on behalf of the incapable individual. Who are these substitute decision-makers? That is set out in section 25, and there's like a ranking system. It starts with the guardian of the person, if they have one, and if they don't, you just go down the list. If they have an attorney, under a power of attorney for personal care or property, the provider may rely on that person. However, if there is no such person, go down the list: the individual's spouse or partner—in this bill, "spouse" is defined to include all conjugal relations—then a parent, a brother or any other relative. The Public Guardian and Trustee is the substitute decider of last resort. So there are a number of provisions that pertain to that. That is also one of the difficulties with the federal privacy legislation—

**The Vice-Chair:** Sorry to interrupt.

Ms Jeffrey.

**Mrs Jeffrey:** Maybe you were going to answer my question before I got there, but I went through the section under "Capacity and Substitute Decision-Making" and the conflict if the child is capable. There's a discussion of an age: "If the individual is a child who is less than 16 years of age," and then later on, under "Incapable individual: persons who may consent" there is "A brother or sister of the individual." I'm wondering what constitutes the age of consent, either of the person who consents or of their agent or someone who is deemed capable?

**Ms Perun:** Under the Health Care Consent Act, we have general rules for treatment that do not speak to an age of consent. The way the act works is if you're capable—there's a test for capacity that's decided by the health care provider; that person makes that determination. If the child is capable, in the opinion of the provider, the child can consent to the treatment. There's no age.

That idea is incorporated in this legislation. Basically, the rule provides that if a child has made the treatment decision, then the information decision about that particular treatment rests with the child; otherwise, the parent of a child who is under 16 is authorized to make the decision on behalf of the child. That's the general principle of this legislation. Does that answer your question?

**Mrs Jeffrey:** Yes, but as a parent I guess I now find that my children are being asked in an orthodontist's office to allow information to be released. I'm not sure they understand the consequences of the signing authority they've just given away. My son just did it as a 17-year-old. Had he been there with a younger brother, could he also have given consent for a brother who is under 16? I just want to ensure that they understand the

consequences of releasing that information. As a parent, it troubles me if there is an alternate who is capable—not that you wouldn't want to release it, but it's something that concerns me as a parent.

**Ms Perun:** In that situation, if a younger sibling comes with an older sibling, I think the ranking would still set out that the orthodontist should go to the parent first. That's generally how the rule would be. Of course, there is the test of whether the substitute decider is available and willing and whether it's reasonable to find the substitute. But in the situation you describe, I would say it's reasonable to seek the consent of the parent.

**Mrs Jeffrey:** Thank you.

**Ms Perun:** Part IV, "Collection, Use and Disclosure of Personal Health Information." Here we come to quite a substantive part of the bill. I've already outlined the requirement for consent in section 28. Section 29 is a critical rule that will generally govern the custodian's collection, use and disclosure of personal health information. This is a general limiting principle that applies to all custodians. The custodian "shall not collect, use or disclose personal health information if other information will serve the purpose." In other words, do not use personal information if you can rely on other information that's not health information. But if you need to, do not use more than is reasonably necessary to meet the purpose of the collection, use or disclosure, as the case may be. This rule also supposes that in handling the information, in terms of disclosing it, an individual would try to minimize the identifiers to the extent possible.

Section 33, with respect to health cards and health numbers: As I mentioned at the outset, the Health Cards and Numbers Control Act is repealed and the provisions of that act reside in section 33. So the repeal doesn't mean those rules are gone; it simply means they are incorporated in this bill.

Section 34 pertains to fees for personal health information. Here the rule for collection and use, set out at page 28, is that a custodian shall not charge a fee for collecting or using personal health information unless it's authorized. With respect to disclosure, the fee that may be charged is the one that is prescribed in the regulations, and if no such fee is prescribed, then it's a reasonable cost recovery fee. There is also a similar rule under the access part in this bill.

Collection: There are rules around collection without consent, set out in section 35. Generally, the rule is that you obtain consent directly from the individual. However, the act allows collection indirectly if, for example, as in clause (b), "the information to be collected is reasonably necessary for providing health care or assisting in providing health care ... and it is not reasonably possible to collect, directly from the individual." For example, the provider would not be able to rely on it as reasonably accurate, or the person is unconscious so you have to collect it from someone else. That is set out in clause 35(b).

There are rules that pertain to custodians that are institutions, which again are the Ministry of Health, the



boards of health and some homes for the aged under this legislation.

The commissioner may authorize another manner of collection—that's set out in clause (d) at page 29. Also, if this act permits a custodian to disclose the information, a custodian may receive it, and that is also set out in this part.

In Section 36, "Use," you will see a number of provisions that permit use without consent: for the purpose for which it was collected and for all the functions reasonably necessary for carrying out the purpose, unless the individual has expressly provided otherwise; for planning or delivering programs of the custodian; for the purposes of risk management or error management to improve the quality of care; for educating agents; to modify the information to conceal the identifiers; for the purposes of a proceeding—for example, if you require the record to prepare yourself for a hearing if you are being sued; for the purpose of processing or monitoring, verifying or reimbursing claims for payment; for research—there's a rule around that. Also, another act may permit the use without consent; that is, we have these rules under collection, use and disclosure, subject to the requirements and restrictions, if any, that are prescribed, if permitted or required under another act.

"Disclosure," at page 30: Here again there are a number of disclosures relating to personal health information. Section 37 permits a custodian to disclose information if it's necessary for the provision of health care but it's not reasonably possible to obtain the consent, unless, of course, the individual has expressly instructed the custodian not to make the disclosure; and for the purposes of contacting a relative, set out in clause (c).

There are rules around disclosing general information about a patient or resident in the hospital; subsection (3) deals with that at page 31. There's a rule around deceased individuals. Section 38 pertains to disclosure for other programs; for example, to determine or verify the eligibility of an individual or for the purposes of an audit, with certain rules that go with that.

The next page pertains to disclosure to the chief medical officer of health and to a public health authority with similar jurisdiction for the purposes of the Health Protection and Promotion Act.

1130

Disclosures related to risk as set out in subsection 39(1) allow the custodian to disclose if the information is reasonably necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or a group of persons.

There's a rule around disclosure where the person is in custody.

Section 40 deals with proceedings. That's set out on page 33.

Section 41, as I mentioned, deals with transfer of records.

Also, there is a provision in section 42 that recognizes that disclosure is necessary in other contexts, and they are set out in that section.

**Ms Appathurai:** Section 43 is research, and I think this is an issue on which you may well hear a great deal during the consultations. In clinical trial—

**The Vice-Chair:** Excuse me. Ms Martel has a question.

**Ms Martel:** My apologies, Carol. Can I go back to the criteria around disclosure around facilities? I suspect when we hear from faith communities, we're going to hear about their concern with that particular section. What is the rule now that operates? As I understand it, now they will actually have to reference a very specific individual by name in order to get the information, if that person is in the facility; is that correct? Is that what your section is saying, "confirmation that the individual is a patient"?

**Ms Appathurai:** Yes.

**Ms Perun:** That is if someone calls and wants confirmation that someone is a patient. This provision permits that confirmation unless it is expressly requested by the individual not to disclose that information.

**Ms Appathurai:** This is really to respond to the florists who come or requests from individuals for updates on the condition of an individual who may be in the hospital. But you're talking about chaplains?

**Ms Martel:** Yes.

**Ms Appathurai:** That is an issue that will be discussed, I'm sure. The issue is how chaplains are to have access to personal information. We think, and we're certainly open to hearing more on this, that they may be able to access information because they're in the hospital and working as an agent of the hospital and therefore would be able, as an agent, to access that information.

**Ms Martel:** Is this the particular section that they're going to reference, though, in terms of their concern about a restriction now that was not in place before? Is this where the restriction is coming in?

**Ms Perun:** I think also the restriction that they feel—if they're not part of the hospital as agent and if their work does not clearly fall under the definition of health care, they would therefore be required to obtain express consent before they can do their work. So then when we look at this issue, we need to look at their relationship with the custodian and whether they could be an agent and whether the type of provision of service would fall under the fairly broad definition of health care that we have currently. So then they would be within the circle of care, in a sense. But it's still an implied consent rule, so there would have to be some consent to the individual wanting to have that kind of service.

**Ms Appathurai:** If we could go back to section 43 on page 34, in terms of clinical research, where you're in a hospital or in a setting where the patient is directly in contact with the researcher, it's easy enough to obtain express consent. But in situations where a researcher is doing a very large-scale study or wants information on individuals who are deceased, they need to have access to personal health information and they are asking that they not have to get the consent of individuals, arguing that this is an onerous task, too onerous, too impractical and



that it is in the interest of the public. It's in the public and ultimately in the individual's interest to have this health research going on.

At the other end of the spectrum are individuals who say, "I want to have control over my information and I recognize the public good that comes from research, but don't use my information for that purpose." So we have tried in these provisions to walk a fine line between allowing access to improve health care and health care delivery, while putting protections around the individual's personal health information. We have looked at experiences in other jurisdictions. We used the tri-council agreement as our basis. We hope we found a good balance, but we're open to hearing from you. If we need to shift, we really would appreciate any advice on this.

Let's go to page 35, section 43(2). When a researcher determines that he would like to do a research project that requires personal health information, he must develop a research plan that sets out certain requirements: the affiliation of each person involved in the research, the objectives of the research and what is the public good or scientific benefit of that research. He must submit—and then you'll see on page 35, subsection (3)—that request, that research plan, to a research ethics review board.

If you go to page 8 of the legislation, you will see under the definition of "research ethics board" that we have the ability to prescribe requirements around how that board is constituted and how it functions. The research ethics board has to look at that plan and approve it, but has to take into consideration (a), (b), (c) and (d) of subsection (3). They have to look at the objectives of the research. Can that be accomplished without using personal health information? What are the safeguards that are in place around privacy? What's the public interest in conducting the research? Is it really not practical or possible to obtain the consent of the individual?

After reviewing the research proposal, the research ethics board will give its approval in writing. The researcher then takes that approval to custodians to request the information. Health information custodians are not required, just because a researcher can show approval of the research ethics board, to hand over the personal information. It's permissive. If they do, they are required to enter into an agreement with the researcher. You can see that's subsection (5) on page 35, and we set out requirements on page 36: (a), (b), (c), (d), (e) and (f). I might not have to read them for you, but one that's particularly important that has to be in that agreement is to "not make contact or attempt to make contact with the individual ... unless the custodian"—the health information custodian—"first obtains the individual's consent."

Often researchers, when they are doing research, come across something—maybe serendipitously—that's very interesting. They would like to take that information, the sample, the individuals within the sample and continue on. They're often very tempted to call them up and say, "Would you like to come in for interviews?" So we've put a control on that as well.

If we can turn to section 44—that's on page 37. This is a disclosure to the ministry for the purpose of monitoring health care payments. This is a provision that just ensures accountability.

If you look at section 45, this is the health data institute section. How this works is, when the ministry requires information for planning and management, the ministry must come up with a proposal which is to be reviewed by the commissioner. The commissioner has 30 days in which to review that. At the end of the 30 days, the commissioner reviews and comments on that. The ministry will respond to those comments, make adjustments and can then request that health information custodians disclose that information to the health data institute.

#### 1140

That data institute has been approved by the Information and Privacy Commissioner and by the ministry and will be reviewed every two years by the Information and Privacy Commissioner to ensure that they have very strong privacy protections in place. It is the data institute that will do the analysis, the linking that is required, will de-identify the information and store it very securely. It will be stored without identifiers and only the key will be maintained as securely.

Where the ministry may require in unique circumstances minimal identifiers, the Information and Privacy Commissioner has to approve that. The ministry cannot request that information to be disclosed to it by the data institute without the approval of the Information and Privacy Commissioner.

We have a number of provisions here that speak to the withdrawal of approval of the data institute. There are a number of provisions around what should happen to the information should that be withdrawn. These are just additional privacy protections around the data institute.

**Ms Perun:** I've already highlighted restrictions on recipients at section 47, so I won't belabour that. Also, there is a rule pertaining to disclosure outside Ontario in section 48. Next, we're on to access.

**Mr Orr:** I'm mindful of the time, so I'll try to be fairly brief. I'm starting on page 42, looking at part V on access.

Up to now, patients have had a right of access, a common law, to their health information. It's been recognized by the Supreme Court of Canada. The patients also have rights under the Mental Health Act and under the Freedom of Information and Protection of Privacy Act where those acts do apply to the particular situation. These acts, as provisions, codify the right of access and provide an easy way to get access and provide recourse in case access is not properly provided. It also provides for appropriate exceptions.

This part starts out by talking about some of those exceptions. The part doesn't apply to information that is quality-of-care information, which we'll get to—that's schedule B to the bill—or similarly, to information as part of quality assurance programs under the Regulated Health Professions Act, or to raw data from standardized



psychological tests, although, of course, if this information could be severed out of the record, then the patient will have the right of access.

Some of the exceptions to right of access are in section 50, for instance, where the record is subject to a legal privilege or a court order which prohibits disclosure, or where it's created primarily in anticipation of or for use in a proceeding. Also, where the information is collected or created in the course of an inspection, investigation or similar procedure, that information would not be accessible to the patient until that inspection, investigation or similar procedure had been concluded.

There's also an exemption for access where granting the access could reasonably be expected to result in a serious risk of harm to the treatment or recovery of the individual or serious bodily harm to the individual or another person, or where it could lead to the identification of a person who has supplied the information pursuant to law or in confidence. There are some specific provisions which apply to institutions under the Freedom of Information and Protection of Privacy Act that are also caught by this legislation which enable them to continue to rely on some of the provisions relating to access there.

I should just mention once again that where the information can be severed out, the information that is severed can then go to the patient. It's only the information that I've mentioned that would not go to the patient.

Nothing in this act is intended to interfere with the normal patient-doctor relationship, and there's a provision in there, subsection 50(6), which specifically says that doctors may continue to give patients information without having to make them go through a formal access request. Where the patient does make a formal access request, however, which must be in writing under section 51, there are specific provisions and rights which then follow.

There is a 30-day time period within which the custodian must answer the request with a possibility of another 30 days being added, an extension of 30 days, where doing it within the first 30 days "would unreasonably interfere with the operations of the custodian" because of the number of pieces of information involved or where consultations are necessary with another person. Once that process has taken place, then the custodian is under an obligation to make the record available or to inform the person that the record doesn't exist or it can't be found, if that is the case, or, if they're refusing the request, to provide a notice of that refusal, with reasons, along with advising the person that the person has the right to then make a complaint to the Information and Privacy Commissioner.

Halyna alluded to fees for access. The health information custodian can charge a fee for access, but it can't exceed the amount prescribed in the regulations or, if there is no amount prescribed, can't exceed the amount of reasonable cost recovery.

I'm going to talk a little bit about correction. Where a patient can get access to their record, they have a right to

require that the health information custodian correct that record if the individual can demonstrate to the satisfaction of the custodian that the record is inaccurate or incomplete for the purposes for which the custodian has collected or used that information. Once again, they must make a request in writing, although of course we specifically say that there's nothing to prevent the custodian from acting on an informal request. Once they make the request in writing, there's a 30-day time frame, once again with the possibility of a 30-day extension. As I said, it is a right. The health information custodian is obliged to make the correction if it is demonstrated that the record is incomplete or inaccurate. There are a couple of exceptions to this.

One exception is, where the information "consists of a professional opinion or observation that a custodian has made in good faith about the individual," the custodian's not going to be required to correct that. Or, if the record is one that was originally created by somebody other than the custodian and the custodian does not have sufficient knowledge, expertise and authority to correct that record, in such a case that custodian will not be forced to correct that record.

I'd like now to deal with part VI of the act, which deals with administration and enforcement. Any "person who has reasonable grounds to believe that another person has contravened or is about to contravene a provision of this act or its regulations may make a complaint to the commissioner." The commissioner also has the ability, where she has reasonable grounds to believe that there has been a contravention, to initiate an investigation on her own motion.

In the case where it's a complaint from a person, the commissioner has the ability to do some preliminary work to decide what other courses of action the person is trying to take with respect to the complaint, to try to effect a settlement or to authorize a mediator to intervene and try to get an early resolution. The commissioner has the ability to refuse to investigate a case "for whatever reason the commissioner considers proper." That subsection also sets out a number of specific grounds that the commissioner may rely on, but it's important to note that it is "for whatever reason the commissioner considers proper." There's the discretion on the commission not to investigate if an undue length of time has elapsed and there has been prejudice, if "the complainant does not have a sufficient personal interest," or if the commissioner believes that in fact the health information custodian has already responded adequately to the complaint. After deciding to do a review, either on a complaint or on her own motion, the commissioner is obliged to "give notice ... to the person about whom the complaint is made."

#### 1150

Now I come to what the powers of the commissioner are in such an investigation. Actually, the term that the act uses is "inspection." There are two kinds of inspections under this legislation. The first kind, dealt with in section 58, is an "inspection without warrant."



**Mr Lorenzo Berardinetti (Scarborough Southwest):** Just very briefly, before you go on with the commissioner, is there a right to appeal any decision that the commissioner makes? Is there an appeal mechanism or is that just provided by the courts?

**Mr Orr:** No, there is not an appeal mechanism specifically in the bill. What that means is that if a person wants to legally challenge the commissioner's finding, they would have to go by way of judicial review rather than by way of appeal.

Getting back to inspection powers, under section 58, which deals with inspections without a warrant, the commissioner has a number of powers. This section can only be relied on if the commissioner has no reasonable grounds to believe that a person has committed an offence. In such case, the commissioner's inspector may, without a warrant, "enter and inspect a premises ... demand the production of ... records," review and copy records, although they can't remove records that are needed for current health care. The commissioner's inspector is also not permitted, without a warrant, to demand production of a person's personal health information without that person's consent. If there is no consent, and the commissioner needs to look at that record, under these provisions the inspector must go under the warrant provisions.

With a warrant, section 59: The inspector would go under these provisions if there was a need, as I say, to seize somebody's personal health information without their consent. Under these provisions, the warrant can impose conditions on the inspector in terms of getting access to that record. The with-warrant inspection provisions would apply where there are "reasonable grounds to believe" an offence has been committed or where the inspector will need to require answers under oath. There is a provision under these powers with a warrant for the inspector to require answers to be given under oath. The with-warrant provisions are also available in case "the inspector has been prevented from" entering premises without a warrant. Basically, they can do anything in these provisions that they would have been able to do without a warrant. But, as I said, they will also be able to see a person's personal health information without consent, subject to the conditions of the warrant, and they'll also be able to require answers under oath.

Section 60 sets out a number of remedial powers that the commissioner has once a review is completed. They are really quite broad. In the case of access and correction requests, of course, the commissioner may order the access or correction to be given.

The commissioner may order "any person whose activities the commissioner has reviewed to perform a duty imposed by this act or its regulations." They can order somebody "to cease collecting, using or disclosing personal health information ... in contravention of this act," to dispose of anything that has been collected in contravention of the act. The commissioner can order somebody to cease or change an information practice or to implement an information practice where that is necessary to achieve compliance with the act.

There are notice provisions, of course. Once the commissioner makes an order, the order must be provided to "the complainant and the person about whom the complaint was made," or, in the case of an own-motion review, to "the person whose activities the commissioner has reviewed." Of course, notice must also be given to "all other persons to whom the order is directed." Notice is also given to the regulatory body, if any. So if it's a physician, notice would be given to the College of Physicians and Surgeons, and also to "any other person whom the commissioner considers appropriate."

These orders must contain reasons, as indeed must the commissioner's notice in case she doesn't make an order. The order of the commissioner can be filed in the Supreme Court of Ontario and enforced as an order of the court. The commissioner has the power to reopen her decisions in cases where the circumstances may have changed.

Once the commissioner has made an order or if a person has been convicted of an offence under this act—and I'm going to come to the offence provision shortly—in either of those cases, the person who has been adversely affected by the conduct in question may go to court and claim "damages for actual harm that the person has suffered as a result of a contravention." This only applies to a person who was affected by the order.

The court has the ability, where the conduct was "engaged in wilfully or recklessly," to include an award of damages "not exceeding \$10,000, for mental anguish."

I've been told there are only a few minutes left, so I just want to skip over the highlights for the rest of it.

Section 66 deals with confidentiality. The commissioner is required to keep confidential information which she collects under this act, subject to a number of exceptions which essentially allow her to do her job.

Starting with part VII, there is a provision for non-retaliation. Nobody is allowed to "dismiss, suspend, demote, discipline, harass or otherwise disadvantage a person" who has, you might say in the vernacular, blown the whistle on the situation or who has said they will not do something which is a contravention of the act or who has tried to draw attention to something which is a contravention of the act.

The immunity provision, which has already been referred to, section 69, protects health information custodians from anything done or not done "in good faith and reasonably in the circumstances." Persons giving or refusing to give consent on behalf of others have a similar immunity.

Under the offence provisions, just to highlight, a person is guilty of an offence if he "wilfully collects, uses or discloses personal health information in contravention of this act"; if they make a request for access under false pretences or a request for correction; under (e) if they "dispose of a record of personal health information in contravention of section 13." I just draw your attention to those as the highlights. There are some more but I won't go over them in detail.



1200

There are regulation-making powers in section 71 dealing with some things that have already been alluded to, exempting persons from the definition of "health care practitioner" if that is necessary; specifying people who will not be included in that class of health information custodians. There are powers to prescribe, in or out, what is going to be included in personal health information. There are also powers to specify requirements with respect to information practices, whether those are ordinary information practices or information practices where collecting, using or disclosing by electronic means—

**The Vice-Chair:** I'm going to have to interrupt there. It's 12 o'clock. We'd like to thank you very much for your technical briefing. We'll be having a recess until 1 pm. I've been told the doors will be locked.

**Ms Martel:** Chair, on a point of order: We're almost done. Can I ask for consent from the committee that we finish so we don't have to do this at another time?

**The Vice-Chair:** Is that agreed?

**Mr Berardinetti:** I have to attend another meeting. I have no opposition to that, but I do have to be at a 12 o'clock meeting. I'll be back at 1.

**The Vice-Chair:** Do we have consent? Agreed.

Go ahead.

**Mr Orr:** I will try to speed it up.

Section 72 deals with public consultation before making regulations. It has already been referred to. Before the Lieutenant Governor in Council can make regulations, the minister is obliged to publish a notice in the Ontario Gazette and to allow 60 days for public comment. At the end of that time, the Lieutenant Governor in Council may make the regulations with or without changes.

As has been pointed out, there are some exceptions to that: where it's "of a minor or technical nature" or required to clarify "the intent or operation of this act" or where "the urgency of the situation requires it," in the minister's opinion.

I would just point out that this is a provision that deals with the legislative aspects rather than the administrative aspects of the act. I think that is the reason, as I understand it, why the Information and Privacy Commissioner is not given jurisdiction over that, just as she wouldn't have jurisdiction over the legislative part of it but would have jurisdiction over the administrative part of it.

It also has been pointed out, but I'd just like to highlight, that where the consultation is dispensed with because of urgency, the regulation is deemed to be a temporary regulation and will last a maximum of two years, will take effect for a maximum of two years, and will cease to apply after that time unless a further regulation is brought in.

I'm not going to go through the complementary amendments in detail. They are largely there to make sure that the provisions in other acts are consistent now with the provisions in this act.

**Ms Appathurai:** The last schedule in this bill is the Quality of Care Information Protection Act. This is an act that is seen to be necessary to improve patient safety. You may remember in 2002 the Royal College of Physicians and Surgeons' national patient safety committee put out a major report with a number of recommendations, and one of their very strong recommendations is that there be protections for quality-of-care information in legislation in each province.

In this act, we've attempted to bring a balance between protecting quality-of-care information but ensuring that information that needs to be public for the sake of the patient is not shielded. We'll look to you for direction on whether we've achieved that balance.

If you go to page 85, I'll just very quickly take you through a couple of the definitions. "Health facility": This legislation applies to health facilities. They are defined there as hospitals, private hospitals, psychiatric hospitals or independent health facilities.

Over on the next page, we are protecting in this act—

**The Vice-Chair:** We have a question.

**Mr Ouellette:** When you talk about these health care facilities, Ontario purchasers utilize services outside the province. How do they pertain to outside-province facilities?

**Ms Appathurai:** We have jurisdiction in this act only over Ontario hospitals. We can't extend it beyond that.

**Mr Ouellette:** Even when we utilize services or pay the funds for outside services we have no control over the information, or is that part of the contract that could be arranged?

**Ms Appathurai:** That would be part of the contract.

In terms of proceedings, we're protecting this information from proceedings. What is a proceeding? You can see in the definition that it is rules of court, tribunal, commission, a coroner's proceeding, a committee of a college, an arbitrator or a mediator.

The "quality of care committee" is a body that's established, and we wanted to be sure that quality-of-care committees wouldn't just spring up self-appointed, so there had to be some conditions around them. You can see that. It has to be "established, appointed or approved by a health facility" or "by an entity that is prescribed by the regulations," and it has to carry on activities for the purpose of quality care improvement. It has to be designated as set out in the regulations, and it carries on, as I said, the quality-of-care functions, again defined in here.

The provisions set in the bill—I won't take you through the rest of the provisions but essentially the requirements are this: When an incident occurs in a hospital, or even a near miss, and there is a need to discuss that incident openly, we want health care practitioners to put forward their opinions on what has happened, an analysis of the situation and suggestions for improvement. Those discussions, those opinions will be protected but those protections will apply only if the facts of the incident are in the patient's file. The patient has access to their information and therefore will have access to those facts. That is the balance that we tried to achieve.



**Ms Perun:** I should also point out that with respect to both schedules, the schedules come into force on July 1, 2004, essentially. So there is an actual date when the act is intended to come into force.

**The Vice-Chair:** Thank you again for your technical briefing. We're going to recess until 1 pm. Please feel free to leave your belongings here as the door will be locked.

*The committee recessed from 1207 to 1301.*

## UNIVERSITY HEALTH NETWORK

**The Vice-Chair:** Welcome back, everybody. I'd like to welcome the University Health Network. You have 20 minutes for your presentation. Any time that isn't used will be divided up among the three parties in discussion and questions. Go ahead.

**Mr Tom Closson:** Good afternoon, everyone. My name is Tom Closson. I'm the president and chief executive officer of the University Health Network.

I'd like to begin by expressing my appreciation to the committee for allowing us to make the submission today on behalf of our hospital. Our hospital has 11,000 staff. We serve almost 1 million outpatient visits per year and 30,000 inpatients.

With me this afternoon is Tiffany Jay. Tiffany is our corporate privacy manager at University Health Network.

University Health Network is the largest academic health science centre in Ontario. It consists of three hospitals: the Toronto General Hospital, the Toronto Western Hospital and Princess Margaret Hospital.

Every year we train more than 3,000 health care professionals. Over 40% of the University of Toronto's medical students are trained at our organization.

University Health Network has consistently supported the adoption of data protection legislation for the Ontario health care sector.

I must say, on a personal note, I've been involved with hospitals in this province for the last 30 years and I've been supporting the adoption of data protection legislation for the last 30 years. So I'm really pleased that we seem to be finally getting there.

This is demonstrated through our commitment to data protection safeguards at UHN based on a national privacy standard which we adopted voluntarily several years ago in the absence of provincial health privacy legislation.

We have included information on these safeguards, such as copies of our privacy policy, and staff and patient brochures on privacy, in the folders that have been given to you. That's in the blue folder. You can, at your leisure, read that.

We are delighted to see that the government has introduced the Health Information Protection Act. We feel that overall the legislation that has been put forward is clear and understandable and it affords our patients the necessary protections in respect of their personal health information.

The University Health Network appreciates what a challenge it is to draft privacy legislation that strikes the right balance between the privacy needs of our patients and the legitimate needs of our health care providers, researchers and fundraisers to access personal information on a need-to-know basis.

Overall, I'd like to say that University Health Network endorses this legislation. However, in reviewing the specific provisions of Bill 31 we have noted three areas where the legislation could be improved or strengthened, and we'd like to comment on them.

Our corporate privacy manager, Tiffany Jay, is now going to explain these concerns. She and I would be happy to answer any questions following her brief remarks.

**Ms Tiffany Jay:** The first of these three areas is research. The accelerated pace of scientific discovery makes medical research a critical part of our hospital to advance medical knowledge. As recently as the past year, our researchers have made important advances against cancer, malaria, eating disorders, heart disease and Parkinson's disease.

Because of its critical role in health care delivery, we are pleased to see a definition of research included in Bill 31. However, we request that this definition be narrowed so that it clearly excludes studies of an administrative or quality improvement nature. We will provide specific suggestions for a revised definition in our written submission next week.

The second area we wish to discuss is fundraising. A substantial portion of health research is made possible through the work of our three affiliated charitable foundations. They are the Princess Margaret Hospital Foundation, the Toronto General and Western Hospital Foundation, and the Arthritis and Autoimmunity Research Foundation. In 2003, their combined efforts alone raised \$62 million for our hospital activities. This constitutes approximately 12% of the total \$500 million raised annually by all hospital foundations in Ontario.

To ensure future funds, University Health Network cannot support an express consent requirement for the collection, use and disclosure of personal, non-health, demographic information for fundraising purposes, for two key reasons.

First, an express consent requirement is inconsistent with the privacy expectations of our patients. For example, our privacy office receives approximately 10 complaints per year from patients about privacy and fundraising. This means that about one out every 20,000 patients complains about privacy and fundraising. In most cases, patients are not concerned with providing express consent, but rather they are interested in receiving more specific opt-out choices. For example, an individual may only want to be solicited by mail, rather than being approached by foundation telemarketing staff.

The second reason why we cannot support an express consent requirement for fundraising is because our doctors, nurses and other care providers have told us that they will not talk to patients about consents related to



health care fundraising because it takes time away from patient consultations and education.

Thus, to summarize, we want patients to have control over their personal information in the Ontario health care system, including health care fundraising activities. We believe such control is fundamental to an e-health environment and to inspiring public confidence in electronic patient records. However, we believe the majority of patients do not feel that such control should require their express consent to participate in health care fundraising. Rather, our history of patient complaints in this area demonstrates our patients' principal desire is to have more specific opt-out choices such as for telemarketing as well as a desire on behalf of our patients and clinicians to have as much time as possible for the delivery of patient care.

Finally, University Health Network has concerns about the right of patients under Bill 31 to withhold or block critical information from their care providers, otherwise known as the lockbox provisions. We feel that not only is it impractical and, in some cases, impossible to sever personal health information from a patient's records, but that lockbox provisions also have potentially serious and negative consequences for patient safety and care. These include adverse drug reactions, an increased potential for misdiagnoses and an increased number of unnecessary medical tests and interventions as a result of incomplete medical records.

Perhaps this point is best illustrated by an example.  
**Mr Closson:** I'd like to give you an example, but let me just say a couple of words before I do. We work in a very large organization. We have thousands of caregivers and when patients come in with complex illnesses, it's very difficult in advance for anyone to determine which care providers are going to have to provide them with care. They can move from one unit to the next, from one program to the next. We call this the circle of care. These are all the people who need to participate in their care.

1310

The idea that someone could in advance suggest which pieces of information should be withheld and could be withheld could cause quite a detrimental impact on their care. My example is one of the health care organizations I worked for—and this may seem like an extreme example to you, but it's an example which might catch your attention. The patient was a staff member, so therefore they were concerned about their health information being shared with other staff. The situation was that they'd had a sex change. So what they wanted withheld from other staff was what their original gender was. They wanted any reference in the record to the fact that they'd had a sex change locked.

Now, this was an organization that didn't have electronic records, so they wanted it done in a paper envelope. This raises the question for the care providers: How do you provide care to somebody if you don't even know which gender they are under the skin? If the person were to say, "Well, I want it withheld," and you say it could be given to the most responsible physician, because

presumably the most responsible physician needs to know which gender the person is, once they know that information, whom are they able to share it with? As the patient moves from one most responsible physician to another, can the information be passed on to the next most responsible physician? What about the nurses who are taking care of that patient?

So I think you can see from this that this becomes quite impractical in terms of delivering care. I think rather than having a situation where a patient can decide that there's information that should be withheld, maybe if there is such information or if there is information in total about the patient, the focus could be more on whom they want it withheld from. So there may be certain people like, let's say, their next-door neighbour who also works in the organization and from whom they would prefer that their health information be kept away. I think that's something we could accept, because then we'd be in the situation where certain people would not be able to get access to the record and other care providers would be in a position to take the place of those care providers who were to be excluded from having access to the record. To me, I think that's a much more practical solution to this.

This, as you may know, has been tried in Great Britain and has created a number of issues in terms of the efficiency of care. Of course, there is the issue of the safety of the patient themselves with their care providers not knowing pretty basic information about them in terms of trying to develop a care plan to deliver care.

**Ms Jay:** In closing, our organization endorses Bill 31, and we hope it is enacted as soon as possible with the amendments we are proposing today in our written submission. We thank you for this opportunity to contribute to the hearing process and are happy to be able to submit a written submission next week. We're also pleased to answer any questions you may have.

**The Vice-Chair:** Thank you very much. We'll start off with the official opposition; for about three minutes.

**Mrs Witmer:** Thank you very much.

OK. I appreciate all the work you've already done in order to protect the information that patients have in their files. I'm interested in the fundraising problems that you have identified here. How much of an impact do you think it would have and mean? How much more money would hospitals have to receive from, I guess, the government in the province in order to make up for what you could possibly lose?

**Mr Closson:** It's hard to estimate it precisely, but one of the big challenges that foundations are facing today is the big donors who have something specific that they want to donate money to and who do not want to give up part of that money for the cost of running a foundation.

One of the sources of funds that foundations rely on to actually be able to pay the foundation staff to go out and raise money is the money that comes in from solicitation using letters or telephone calls. In fact, if that money dried up, I'll tell you, the foundations would just be ground to a halt in this province. So you could say it could be as much as \$50 million for our organization



alone. I'm going to give you a very broad range, but I'd say it would be anywhere from \$10 million to \$50 million out of the \$67 million or \$70 million that we raised last year. Mount Sinai did a six-month study using express consents, and they found that they were only able to get express consents from 10% of their patients. So they cut off 90% of the potential people from being available to try to solicit money from.

**Mrs Witmer:** What about the research? What do you think is the biggest impediment contained within the legislation as it presently stands?

**Mr Closson:** The legislation requires approval of research studies by the research ethics board which, of course, is a very positive thing. In our organization alone, we have 1,000 studies going to the research ethics board a year—1,000. We're actually pretty much in sync with the legislation on this point. We just want finer language about what a research study is, because there are a lot of internal studies that are done as part of managing the organization that you really wouldn't call research studies. We want to make sure that they don't have to go to the research ethics board, so it's just fine-tuning of the wording. In our submission, we'll give suggestions as to what the wording could say.

**The Vice-Chair:** Third party.

**Ms Martel:** Thank you for coming here this morning. Let me go back to the fundraising. Tell me how you solicit someone now. Do you go to every patient who comes in a year, on an annual basis? How does it work?

**Mr Closson:** Yes, we do. We have lists. We provide demographic information to our foundations of the name of the person and their address. The foundations then solicit from them.

**Ms Martel:** The study that was done by Mount Sinai, was this a letter that they sent, then, to the entire patient list, asking them if they wanted to be on a fundraising list?

**Mr Closson:** That's my understanding, yes.

**Ms Martel:** The extremely low response rate—do you think that was just that people didn't take the time to respond, or did they really not want to be solicited any more and responded in that way?

**Mr Closson:** Based on our experience, we get very few complaints, as Tiffany was saying. One out of 20,000 people complains about the fact that we've solicited them, so I don't think this is a concern about being solicited; I think it's people having better things to do with their time than respond.

**Ms Martel:** When we talked about that this morning, earlier in the briefing, and you wouldn't have been part of that, one of the ministry's suggestions was that we could allow for the hospital to actually write to the patients and ask them if they wanted to be a part of fundraising campaigns, if they wanted to be approached. Is this the same kind of thing that Mount Sinai did?

**Mr Closson:** That's essentially what Mount Sinai did, so we don't think it will work.

**Ms Martel:** So you wouldn't see that as an option.

**Mr Closson:** No, we don't think it will work.

**Ms Martel:** OK.

**Mr Closson:** We think that the patients would lose the opportunity of being educated about what's going on in their hospitals, too, because we do use this as an opportunity to educate people. We send out information about the hospital and the latest things that are happening. We can refer them to our Web site. We wouldn't be able to afford to send out those kinds of educational materials if there wasn't some potential for having some money come back.

**Ms Martel:** I appreciate that. Across, let's say, Toronto and the GTA, outside of Mount Sinai, are there other hospitals that have tried to do a similar thing to really gauge the reaction of their patients with respect to this matter?

**Mr Closson:** Not that I'm aware of, no.

**Ms Martel:** I'm not sure if I had anything else about fundraising. If I go back to the research, then, what you are essentially going to provide the committee is a tighter or a more limiting definition of research itself?

**Mr Closson:** Of what is research. That's right.

**Ms Martel:** Your ethics committee has been in place for some time now?

**Mr Closson:** We actually have two ethics boards. They meet alternate weeks, so we have them meeting every week. They've been in—I don't know the number of years—certainly longer than I've been at—

**Ms Martel:** So we should assume that most hospitals already have the ethics committee, that's not in question, and that there is always a process for having research proposals reviewed etc. Should we also assume, at least perhaps for some of the major downtown Toronto hospitals, that in fact these same kinds of numbers of projects are occurring, one institution after the other?

**Mr Closson:** Yes, we do about \$140 million a year in research at UHN, so we are a very large research organization, but it turns out to be about 1,000 studies a year, at least the last time I asked.

1320

**The Vice-Chair:** Three minutes for the government side.

**Ms Wynne:** Thank you, and I apologize for coming in to your presentation late; I was in another meeting.

Can you talk a little bit more about the lockbox issue, about the specific recommendations that you would want to see around that disclosure issue?

**Mr Closson:** We've sort of come at this from the basic premise, when I talked to clinical staff, of their concern about whether they can safely provide care to a patient without having all the necessary information about that patient's condition and their medical background. So we feel that any sort of lockbox approach is going to limit the amount of information that's available in the circle of care, to the people who have to provide care to the patient.

We have an approach. We have an electronic health record at UHN which we audit. We do random audits of everybody who comes through our hospital to see who's been looking at their record. In fact, for famous people



we do an automatic review of who's been looking at their record, and if we find anybody on our staff—one of our students or residents, staff members, physicians—who's been looking at a record who has no right or no reason to be looking at the record, then we take action against them up to and including dismissal. It's in our policy. It's even on our computer screens, "Don't go past this screen unless you have reason to be looking."

Our view is that more of an auditing approach to make sure that only the right people are looking at information and being serious about taking sanctions against people would be a much better approach to this than limiting the ability of the people who do need to have access to the information.

**Ms Wynne:** So you think it could be controlled in a reactive rather than an initiative sort of—

**Mr Closson:** Yes. The word "reactive" doesn't sound too positive. I think it's—

**Ms Wynne:** I was using it with its connotation, though, that you're reacting to something happening as opposed to trying to prevent it from happening.

**Mr Closson:** That's right, and the reason this process works, and we know that it does, generally speaking, is because the staff know that you're looking. It's even on the computer screens to tell them that you're looking to make sure that they had a reason to be able to look at the records.

**Ms Wynne:** And in your presentation you're going to provide details about how you think that should be modified?

**Mr Closson:** Yes, we'll say in our submission how we think it should be modified.

**The Vice-Chair:** Thank you very much, Mr Closson and Ms Jay, for your presentation.

#### THE ANGLICAN, EVANGELICAL LUTHERAN AND ROMAN CATHOLIC CHURCHES IN ONTARIO

**The Vice-Chair:** I'd like to call the next group. It's the Anglican Church, the Roman Catholic Church and the Lutheran Church in Ontario. You may start. You have 20 minutes.

**Bishop George Elliott:** Mr Chair, committee members, we'd like to thank you for this opportunity to appear before you as the committee considers Bill 31. We represent the Anglican, Evangelical Lutheran and Roman Catholic Churches in Toronto. I'm Bishop George Elliott, from the diocese of Toronto. With me are Bishop John Pazak, from the Roman Catholic conference of Ontario bishops; Adam Prasuhn, from the Eastern Synod of the Evangelical Lutheran Church in Canada; and Harry Huskins, who is the executive assistant to the Metropolitan of the ecclesiastical province of Ontario.

We support and welcome the intent of the bill to further the privacy of health information. We would like to present a summary of our more detailed brief, which has been given to you, for a few moments and would

welcome the opportunity to discuss our concerns with the members of the committee.

We have had a concern for some time that legislative and regulatory action taken by the federal and provincial governments may, unintentionally, have adverse consequences for individuals and their religious community as they live out their religious faith.

We are concerned that necessary safeguards around personal information do not obstruct individual residents and patients in government-operated and-funded institutions from having access to their spiritual caregivers and fellow religious community members when they most need them.

These concerns are focused in two specific areas. Number one, we are concerned that clergy of these religious communities are not denied access to the members of their faith who want their presence and help at what are often very difficult times in their life. Secondly, we are concerned that chaplains in these institutions are not prevented from doing their work by the provisions of the bill or by misinterpretations of the bill.

Pastoral concerns: We can provide you with examples of this system, both when it works and when it does not. Recently, a woman dying at the palliative care unit in Princess Margaret Hospital wished to marry her partner of 11 years. The staff chaplain performed the marriage ceremony at her bedside with a telephone hook-up to North Carolina so that her daughter could hear the exchange of vows.

A man awaiting a heart transplant in the cardiac unit of Toronto General Hospital wished to marry his partner. The resident chaplain, a foreign student, could not legally perform the wedding. With the co-operation of a community clergyperson, the wedding was celebrated in the staff lounge of the unit. Nurses, doctors and other clinicians were overjoyed that such an event was made possible for the patient.

Then there are the cases in which there are problems. Within the past two weeks, an Anglican priest reported to the coordinator of chaplaincy services for the diocese of Toronto that he was denied information relating to a parishioner of his church at a Toronto hospital. The priest had made plans to meet with the parishioner and his wife to share in the sacrament of the sick. Information personnel at the reception desk denied him information because he was not next of kin. It was only when he called his parishioner, who then informed the front desk, that he was allowed access. Even then, his access was questioned because his presence meant that the parishioner then had more visitors than the post-SARS visitor protocol allowed.

Legal concerns: In our main brief, we go in some detail into the changes we would recommend. These changes are relatively minor in nature and would have little effect on the rest of the bill. We can summarize them quickly for you.

We have mentioned our specific concern that clergy and religious care providers from outside the institution are not denied access to the members of their faith who



want their presence and help. We think that the way to ensure this lies in the definition of "personal health information." This is defined in the bill as certain information about an individual, whether living or deceased, and whether in oral or recorded form, that can identify an individual and that relates to matters such as the individual's physical and mental health. Clergy and other religious and spiritual care providers need to know what members of their faith are in an institution in order to carry out their ministry. We believe that the bill should clearly state that providing basic information to clergy and religious caregivers is not a violation of the act, and that this information should be provided to them.

Our second specific concern is about chaplaincy. Because Bill 31 does not recognize chaplaincy services as part of ordinary health care and does not address the status of chaplaincy services directly, things are left uncertain and ambiguous. Because the bill is ambiguous and there are penalty provisions for breaching it, our fear is that it will actively discourage communications that are and have been essential to the achievement of the goals of chaplaincy. We do not believe that the successful achievement of the goals of the legislation requires this result.

We believe that the most reasonable way to solve the problem addressed in this brief is to include chaplaincy services in the definition of health care, and chaplains employed by or accredited by a health information custodian as health care practitioners. This will allow chaplains to obtain access to personal health information and oblige them to safeguard it.

**Conclusion:** Let us say again that we welcome and support the intent of the bill and we firmly believe that its goals can be achieved while continuing to facilitate provision of spiritual and religious care in these institutions. We think that this bill, however, must recognize that freedom of religion is a fundamental right in Canada. It is protected by section 2(a) of the Canadian Charter of Rights and Freedoms. It is also protected by the United Nations Universal Declaration of Human Rights, 1948. In addition, the World Health Organization defines "health" as a state of complete physical, mental, social and spiritual well-being "and not merely the absence of disease or infirmity." The Canadian Council on Health Services Accreditation has essentially adopted this definition. It needs to be adequately reflected in Bill 31. In addition, we believe that the terms of this bill should be consistent with the 1992 memorandum of agreement concerning chaplaincy services in publicly funded institutions.

1330

The Supreme Court of Canada has made it clear in the case of *R v Edwards Books* that under the charter, freedom of religion includes not only the right to believe, but also the freedom to practise religion in a way that does not harm others. We believe that substantial constitutional questions would be raised by the existence of legislation that has the practical effect of impairing the ability of individuals to obtain religious care, including when matters of life and death may be involved.

In conclusion, let us say that we are very grateful that you have given us this time to speak with you and to tell you how essential we believe the matters we have raised are to the ability of our churches and people to carry out their ministries. Thank you.

**The Vice-Chair:** Thank you very much. There are about 12 minutes remaining, so that's four minutes each, starting with the third party.

**Ms Martel:** Thank you for coming here today. I think I see the solution very clearly in terms of part number II. It was number 1, if I can just go back to it, and I apologize if I have just missed this. The shorter brief says, "We think that the way to ensure this lies in the definition of 'personal health information.'" You're proposing an amendment to "personal health information" that is currently in the bill? Am I correct about that?

**Archdeacon Harry Huskins:** If I may respond on behalf of the group, when we began analyzing what the situation was in terms of the bill, it became very clear to us that we in fact face two problems, if you will. There are those people who are spiritual care providers who operate within the institution, are well known within the institution, are accredited by the institution, and we use the generic forms "chaplains" and "chaplaincy" for that. And you're right; that's what most of our detailed brief is about, in dealing with that.

There's a separate problem with clergy, if you will, those spiritual care providers who are from outside the institution. I think you're probably all aware that there's such a diversity of religious communities in this province and the forms that those take. Again, if you're going to use the generic term "clergy," that could involve an awful lot of people. For those who work day to day and are well known within the institution and are accredited by it, it's not a difficulty in terms of providing them with information, obliging them to safeguard it and providing them with only the information they need. But for all of these people outside the institution who could fall into that category, we recognize that there would be a very serious problem here in—how do I phrase this?—letting people come in off the street saying, "I'm a spiritual care provider and I want access to information." How do you ensure that, how do you accredit people, how do you supervise them?

So we feel that there should be two approaches to this. For those outside the institution, the information they need really is that a member of their faith is there, and maybe the room number and when it would be all right to go visit them. But they don't need any more information than that. The privacy standard that has now been enacted by the federal government in the United States draws a distinction between those inside the institution who need the wider breadth of information and those outside, and they refer to the information needed by those outside as "patient directory access." We believe that that information—who it is, where they are and when it would be OK to see them—does not fall within the definition of the bill as it stands now. If that could be clarified, if that could be said just in that way so it



couldn't be misinterpreted by institutions—and we are all familiar with the perfections and imperfections of institutions—then we think that would solve that problem.

**Ms Martel:** Do you have cases where you would have members of the clergy essentially going to a hospital, not knowing who from their faith community might be there and might want a service, but just generally saying, “I am here. I am from this faith. Who might I be able to see?” Does that happen as a regular occurrence now?

**Archdeacon Huskins:** I can only speak from the Anglican perspective. Mr Prasuhn is here representing the Evangelical Lutherans, but also the Ontario Multifaith Council on Spiritual and Religious Care, and so he is far more attuned to that and may want to comment in a moment.

Certainly the practice in this province previously has been that the clergy would go to the front desk—when this was small-town Ontario, everybody knew who the clergy were; it wasn't a problem. Usually the people sitting at the front desk knew them only too well. I know that in my own parishes over the years I'd go to the front desk and be given a list of the people who had declared themselves to be Anglican when they came in. The fact that they declared themselves to be Anglican intimated that they wanted me to know that. Often people would put in nothing and I would get no information about those. So I'd take the list and begin doing my rounds. I'd consult with the people involved—the floor nurses and so on—to make sure I wasn't intruding at a bad time, and it worked very well. It may be that we've moved past that. Frankly, I would regret it, but that may be a reality we live in, I'm not sure. I would like to see that continue.

Adam, could you talk about the wider religious community?

**Rev Adam Prasuhn:** I think you've put it very well, in that it has been the practice in the province for many years—I started in hospital chaplaincy in 1972—for lists to be available to visiting clergy and other spiritual caregivers. I think, unfortunately, we are past that day, so further steps have to be taken.

A particular concern we have in the multifaith council is that many of our spiritual caregivers from other faith groups are not readily recognized by hospital staff when they appear. They may have been requested by the family, but there are often questions; for instance, about an aboriginal person who is recognized as a spiritual caregiver by his group, coming to a hospital and really not having ready access. So we do have those concerns.

**The Vice-Chair:** Thank you very much. The government side for four minutes.

**Ms Wynne:** I'm just trying to get my mind around how this would change the current practice, specifically in the big cities. We're not in a situation where people will know, so I write “Protestant” or “United Church” on my file. How would what you're suggesting change what would happen now, in the sense that if I wanted my minister to be with me, I guess I would communicate that to him? What are you suggesting that would change?

**Archdeacon Huskins:** Actually, I don't think it would change anything in most cases. Again, Adam is more

familiar with this on an across-the-province basis. What usually happens is that the clergy who appear at the front desk already have been in there years or months before. They have a card with photo ID on it, they've been accredited by the institution and there are letters of reference from their religious community on file.

As I said, I don't think it would change anything at all. It might force us to ensure that happened in very single instance, and we would have to do some careful work to be sensitive to the needs of non-Christian, non-European religious communities.

**Ms Wynne:** Or non-practising. I guess there's an issue that because I write “Protestant” or “United Church” on my file—you made an assumption earlier that it meant I wanted a visit, and I'm not sure that link is actually true.

My second question is, is this act the right vehicle for what you're asking? Is this act where this should be, or is it another issue that we should be looking at? I guess I'm just not clear. We're talking about health information as opposed to access to people who are ill, so I just don't know that this is the place where it should be located or where the discussion should take place.

**Archdeacon Huskins:** Our choice would have been to have a separate health access act or something a number of years ago. The reality is there's nothing in place in the statutes of Ontario or in the regulations that deals with that. In the absence of that, if this act goes forward as it is now written, we will have to live with the result, and we believe that in many cases this act will be interpreted by the institutions involved, as we say in our fuller brief—the lawyers know more about this than I do, particularly the constitutional ones—to mean in some cases that the front desk staff will have orders when somebody comes up and says, “I'd like to visit so-and-so, they've called me to come, I know they're in room so-and-so,” not even to inform them or acknowledge that the person is in the institution's care.

1340

**Ms Wynne:** So we at least need to have a discussion with ministry people about whether that was the intention in any way. OK.

**Archdeacon Huskins:** I'm sure it isn't the intention, but I think we need that clarified a bit, and we think we can do it without having ramifications for the other portions of the act.

**Ms Wynne:** Are the detailed suggestions in your larger submission?

**Archdeacon Huskins:** They are indeed, and you'll also find in there a position paper—most of the brief is a position paper from Manitoba, where there is already in place an act similar to this and where the very problems we are describing to you are in fact happening now. So this isn't, as we say, just unjustified anxiety, this is a situation that exists, and we would like to forestall that in Ontario.

**Mr Ouellette:** Thank you very much for your presentation. I enjoyed it very much, and it's great to see you here together as a group.



I was very interested in the perspective you brought forward. In your case of the woman dying in palliative care, do you believe the hospitals could interpret that by entering a hospital or being on certain wards you would be receiving information that could be called a disclosure by the hospital, that because you went into a certain ward and those individuals are in that ward, that would be a disclosure of information?

**Archdeacon Huskins:** I don't think it should be. I fear it would.

**Mr Ouellette:** Yes. This would have a large impact not only with the religious community but also with service clubs—the Legion—that provide rides, other clubs like the Lions Clubs and organizations that take groups or individuals back and forth to the hospital. That could have a significant impact on those service providers as well and would have to be picked up elsewhere. So you believe that the medical community could view this as a way of denying access because it is disclosure of information?

**Archdeacon Huskins:** I think one of our group might want to respond in a moment. You touch on something we didn't bring up here but that is personally somewhat close to me. I've worked for many years with a group of patients who have gone through open-heart surgery and recovered, who go into the hospitals. They sit and talk with other people in ways that are profoundly more effective than I ever could. It isn't what they say or do, it's that they've been through it, they've lived through it, they're out there jogging and everything else. The fact that they're talking to these people—I think maybe you understand; I find it hard to put into words. They are some of the most effective spiritual caregivers—and some of them are committed atheists—that I have ever encountered. Although I would not want to speak for them in any way, I just would not want to see that cut off, that people facing that would not have the opportunity to sit down with somebody else and discuss with them what's going on in their life.

**Mr John Varley:** Just to add to what Archdeacon Huskins said, from the perspective of a lawyer who does a lot of statutory interpretation, I think the concern is very valid, particularly with respect to the sensitivity of privacy legislation. There's a lot that could be said or be concerned to be said with respect to any potential breaches of the privacy act by any openness of the sort that we think is appropriate. It's something that a cautious counsel would probably say your best cause is simply not to allow anybody in for fear that there may be a possibility, and therefore I think a clarifying sentence in the legislation is probably quite appropriate.

**The Vice-Chair:** Mr Yakabuski.

**Mr John Yakabuski (Renfrew-Nipissing-Pembroke):** Thank you very much for coming here today. Back to the part about access to patients, I take it there's a section on the admission form where people indicate a religious affiliation. If there was a section or an addition that they could request, if available, a member of their clergy, would that satisfy that part of your concern? If there

could be a provision on the admission form that, if a member of their religious affiliation were available, they would like to have a visit by them, would that satisfy that?

**Rev Prasuhn:** That certainly would help. A concern I would also have is that where a person has not had the opportunity to give express consent—for instance, a resident of a long-term-care facility who has been in the institution for some time—that that not be construed as withholding consent.

**Mr Yakabuski:** Right.

**Bishop John Pazak:** Or you could have an emergency case where there just isn't time to do that and then the family tells the priest or the minister—

**Mr Yakabuski:** But there are provisions in your form for people to speak for those who are not in a capacity to do so. But if that provision was there, that should alleviate some of that concern, I would think. That is something hospitals would have to work out.

**Bishop Pazak:** It would help.

**The Vice-Chair:** Thank you very much for your presentation.

#### CENTRE FOR ADDICTION AND MENTAL HEALTH

**The Vice-Chair:** Next is the Centre for Addiction and Mental Health. Welcome. You have 20 minutes.

**Ms Gail Czukar:** Thank you. Good afternoon. I'm Gail Czukar, the executive vice-president of policy and planning at the Centre for Addiction and Mental Health. With me are Kate Dewhirst, legal counsel at the centre, and Peter Catford, chief information officer and vice-president of information management.

The Centre for Addiction and Mental Health is Canada's largest mental health and addiction facility. It was formed in 1998 from the merger of the Addiction Research Foundation, the Clarke Institute of Psychiatry, the Donwood Institute and the Queen Street Mental Health Centre. We do a very wide variety of things. We have a variety of clinical programs, in-patient and out-patient, satellite clinics and community-based services. We also have a very extensive research, education and provincial program around health promotion and prevention.

I'm going to try to keep my remarks brief to allow maximum time for questions, so I'm going to try to concentrate on those issues that are particular to the mental health and addictions field. I'll say at the outset that while we've given you a brief, we may well want to expand on this brief next week. We're still going through the bill and discovering new and interesting things and consulting with our internal and external stakeholders to bring you the best information and suggestions that we can on the bill. I know it has a very short timeline, so we'll do that as quickly as we can.

The bill is complex. It's going to take time and study and it will have significant implementation issues. Mr Catford is here to help you with any questions you might



have, particularly around the systems and records issues, in that regard.

You'll see that we've made some recommendations. I'm going to actually be concentrating on the points on pages 6, 7 and 8. The recommendations are listed at the end.

We recommended an extension of time to bring this into force in order to allow for those implementation issues to be worked out, and in particular to allow for consultation with stakeholders by the ministry and the government to develop regulations and to develop templates and materials that will be helpful to people. That's the first recommendation, to extend the time for coming into force.

Others before us have spoken of the lockbox provisions. We of course have clinicians who want to have complete sharing of information so that they can provide the best care—and I think Mr Closson put that case rather well—and practitioners in this field would feel the same way, that they function best when they have all the information and no impediments to that. Of course, in the mental health field we're used to operating within the constraints of the Mental Health Act, where information sharing is concentrated mainly within the treatment facility and to some extent with other hospitals. But our issues are more with the boundary between the hospitals and the community, and I will come to that.

On the other hand, we're very aware of the effects of wide-open information sharing on stigma and discrimination against our client group, and we're quite concerned about that. We recognize that the legislation has tried to achieve a balance. We think it's mainly successful and we certainly support the government in bringing forward this legislation at this time. It's much preferable to having PIPEDA apply in the health care context.

1350

What we'd like to suggest, however, is one change with respect to information sharing between hospitals and community agencies. A lot of community agencies that our clients deal with may not be caught by the definition of the community service in subsection 3(1), paragraph 3, subparagraph vii, which is the one that talks about community service that's primarily providing health care. There are agencies that provide case management services, supportive housing, vocational services and some social recreational programs that we work with to discharge patients to who may not be within that circle of care within the meaning of that definition.

What we're thinking of is something that might be like the information-sharing provision that's currently in the Mental Health Act in section 35.1 with respect to community treatment orders, where a physician who is developing a community treatment order can consult with people in the making of the community treatment plan, which is the care plan, and would be comparable to a discharge plan. We think that some mechanism like that might work to make it clear with whom information can be shared and for what purpose, and that would be for the making of the discharge plan and for transferring a

person to those services. That might help us forestall the use of the lockbox provisions too much in the mental health context, which is something we would be concerned about. That's an idea we're exploring with some of our stakeholders and would be willing to work with the ministry on if they're interested in that.

Another issue that we're particularly concerned about in the mental health context is the disclosure of personal health information with respect to Ontario Review Board proceedings. Ontario Review Board is the Criminal Code Review Board under the Criminal Code for people with mental disorders. There isn't a provision similar to the one in the Mental Health Act which specifically allows the disclosure of records to the Consent and Capacity Board. There are a number of provisions in the legislation that allow disclosure of information for placement of people in custody—it specifically refers to part XX.1 of the code—and for disclosure of information to comply with orders of the board. We're not entirely certain that this covers the disclosure of information to the board for the making of the dispositions. We want to make sure that is there. Again, we're still looking at it but we don't think it's clear at the moment.

The final point I'll make is with respect to research databases. We share some of what has been said previously by Mr Closson. Researchers tend to have their own databases. They comply with a lot of federal granting agency regulations and other requirements that make them feel that they obtain explicit consent, for the most part, for collection of information, that they do a good job of protecting it. To bring those databases under the jurisdiction of our information management capacity will require significant implementation time and cost. If you have further questions on that, I think Mr Catford could answer those.

I'd like to conclude my remarks there to allow time for questions.

**The Vice-Chair:** Thank you very much. We'll have three minutes each, starting with the government side.

**Ms Wynne:** Thank you for your presentation. Could you talk a little bit more about—it's subparagraph vii of paragraph 3 of subsection 3(1); is that right?

**Ms Czukar:** Right.

**Ms Wynne:** OK. Can you give us an example of the kind of thing that—you're suggesting that we replace it with 35.1 from the other act and I don't have that in front of me.

**Ms Czukar:** No, I wouldn't suggest that it be replaced. I think this definition is fine as far as it goes. The limitation in it is that it talks about "a centre, program or service for community health or mental health whose primary purpose is the provision of health care." That's the key. There are many mental health and addiction agencies that would not see themselves as providing health care even with the broad definition of health care that's in the legislation. I'm not advocating changing that definition, because I think it's a good idea to keep it restricted to health care for other reasons. That's why I'm suggesting that there might be a special



recognition for mental health programs—I would call them programs rather than agencies—that may not be providing health care within that definition. The risk to them is that they're disclosing information that does get to be found out to be health care, and it's not. We want to disclose health information, but they may not be caught here.

**Ms Wynne:** Are you making a specific, more elaborate recommendation on exactly what you think the language should be? Is that included in a presentation that you're going to give us?

**Ms Czukar:** We're not quite there yet with the specific language. It's the idea of it that has just been developed.

**Mrs Witmer:** Thank you very much for your presentation. Having been involved in the reform of the Mental Health Act, it looks like you've done another outstanding job of reviewing this legislation. I guess you've identified a problem that I have certainly seen, and that is the very short timeline for implementation of this bill and the amount of work that is going to be required in order to educate those who are going to be responsible for the development of materials. You're suggesting that it should be delayed for at least another six months, which would be about a year from now. Would you say that a year is long enough, or are you suggesting that it would take longer than that?

I guess I ask that question based on the fact that I was health minister when we started to develop this legislation, so if you take a look at the number of years it has taken us to get this far, and then you think about how long it's going to take to educate those who are going to be required to be in compliance, is a year realistic?

**Ms Czukar:** It's better than a few months, which is what we'll have once the legislation is passed. I recognize that people will start their work before that. Having been involved in the government regulations process myself, I know that trying to have a consultation on regulations that will be required under this, and have them in effect, and people understand them by July 1, is just unrealistic. I think six months is a lot better and can be worked with. There may still need to be some staged implementation. I think Mr Catford may have something to say, though, about implementation.

**Mr Peter Catford:** I think, as you comment, we've been working over the years to try and move our systems to be better, particularly the computerized systems. As you know, the average system takes eight to 12 months to implement, so in the event that we have to make major changes—an example would be lockbox—most of our commercially purchased software wouldn't support such a concept. Then, really to react with our major systems might take us six to eight months. That's probably a minimal need. We'd have a combination of manual and automatic and probably error-prone process to respond to things like the lockbox.

**Mrs Witmer:** The other thing you've talked about is the cost of making these changes. Have you given any consideration to what it would cost an organization like

yours to fully implement the changes that are being anticipated here?

**Mr Catford:** We have about 35 different computer systems that contain personal health information in one form or another. If we had to change every single computer system and modify it, and you'll take the same kind of logic that it takes six to eight months to undertake a project like that, then you're talking eight months times 35 systems. Obviously, we can do a lot of that work concurrently, but it's still an order of magnitude—I had estimated it was somewhere between \$4 million and \$8 million for the centre to respond to that in a purist way. Obviously, we can make compromises and we can implement manual processes and we can do a bunch of other work to try to protect the personal health information and to comply with the act.

I think, by and large, the system over time will have to invest that much to be able to be responsive. I think I'd draw the committee's attention to HIPA in the US and the upheaval it's created in the vendor community. Particularly most Canadian hospitals acquire their systems from the US vendors who are responding to the HIPA legislation. You'll see very publicly that the vendors are taking a hard stance that it's difficult to do. The hospitals have delayed the clinical part of that implementation a number of times. So I think it is a difficult undertaking. I think six months would be an absolute minimum.

**Ms Martel:** Thank you for being here today. I didn't understand the information you were providing to us with respect to research databases. You said, I think at the start, that researchers who are involved with federal agencies feel they have received consent, but after that, I didn't understand the rest.

1400

**Ms Czukar:** They're really two different issues. In terms of collecting information for research, if the entire scheme of the act applies, which it would seem to, then all the provisions around collection, use, disclosure and access will apply to research information. Currently, researchers in, I would say, most hospitals maintain their own databases. We have a clinical records database that Peter and his group manage, but they don't manage all the research data. So the researchers know what data they have, but if we had an information access request to research information of Dr Jim Kennedy, for example, we wouldn't be able to honour that because we don't have his information. Researchers get grants. They have laptops; they may have databases that—you know, they give the laptops to their graduate students to collect information and they carry that around with them. We don't know what they are; Peter's area would not have a list of those. So one of the big implementation issues would be to bring those research databases into the full scope of our information management. That's the main thing I was talking about.

**Ms Martel:** Right now they belong to individuals per se versus to the organization as a whole.

**Ms Czukar:** Yes. The alternative is for the individual researcher to be considered a health information



custodian under the legislation, which would be the way it would go. But then they'd have to be able to comply with all the security requirements and all the information management requirements and all those things. We're still looking at which way is better. We'd hoped to have our VP of research here today, but unfortunately, he couldn't make it.

**Ms Martel:** What do they do now with respect to those issues of security and safekeeping?

**Ms Czukar:** They would say they have very good safety and security, because they have to comply with the requirements of any federal granting agency, in Canada or the US, that they get money from. So they have a lot of those requirements. I think the issues will be more whether they can—they would not, for example, right now provide access by people to that information in the way that this legislation would mandate. We're not sure how all the other requirements would apply, because they're not used to it.

**Ms Martel:** In terms of letting people know how the records are kept and who to contact etc, which is right now an obligation of the custodian.

**Ms Czukar:** Those would be new.

**Ms Martel:** Just going quickly through the recommendations, I see your last point, number 8, is that subsection 70(3) be deleted, the offences involving officers. Can you explain to the committee why you would like to see that section removed?

**Ms Czukar:** That's in our recommendations, and I'll point out that there's a slight inconsistency. On the previous page, we said it should be redrafted, but the more we thought about it, we couldn't figure out how to redraft it. The problem with strict vicarious liability is that we don't see how you can say that an employee or an officer is convicted of an offence when the corporation has not been prosecuted for it. I mean, if the section starts out saying that if a health information custodian has committed an offence but hasn't been prosecuted or convicted, I don't know how you know they've committed an offence if they haven't been prosecuted or convicted.

**Ms Martel:** All right. In "penalty" it says, "A person who is guilty of an offence under subsection (1) is liable...." And then it says here, "If a corporation commits an offence...." If it says, "If a corporation is guilty of an offence," what happens under that circumstance then?

**Ms Czukar:** That would be better.

**The Vice-Chair:** Thank you very much for your time.

#### INSTITUTE FOR CLINICAL EVALUATIVE SCIENCES

**The Vice-Chair:** The next group is the Institute for Clinical Evaluative Sciences. You may begin.

**Dr Andreas Laupacis:** Thank you very much. Good afternoon. My name is Andreas Laupacis, and I am the president and CEO of the Institute for Clinical Evaluative Sciences, also known as ICES. I am accompanied by ICES's privacy officer, Pam Slaughter.

In this presentation we will briefly describe ICES and how we use health information in research activities. We will highlight many of the positive aspects of the proposed bill, and we'll conclude with some areas of particular concern to ICES.

ICES is an independent, non-profit organization that conducts research on a broad range of topical issues to enhance the effectiveness, quality, equity of access and efficiency of health care in Ontario. ICES uses population-based personal health information to produce knowledge that can be used by the Ontario Ministry of Health and others to support health policy development and changes to the organization and delivery of health services in Ontario. ICES also conducts programs of research that are publicly funded by organizations such as the Canadian Institutes for Health Research, among others. ICES reports and our list of publications are made available to the people of Ontario on our Web site.

New legislation is required for the protection of personal health information while at the same time ensuring that health information is available for research and the evaluation and management of the health system. The latter includes measuring the delivery and outcomes of health care in Ontario and comparison with accepted benchmarks of quality of care. We applaud the ministry's hard work in developing a health-information-specific bill. We believe that, in general, the provisions of HIPA will balance the protection of privacy of people's health information and the public interest served by health research. We particularly endorse the following features of HIPA:

(1) It's based on the 10 privacy principles in the Canadian Standards Association code included in PIPEDA.

(2) It affirms the important roles and responsibilities of research ethics boards, which I will subsequently refer to as REBs.

(3) The Information and Privacy Commissioner of Ontario will have a central role in the proposed legislation.

(4) The rules and requirement for uses of personal health information are very similar to those of the Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans, our highest national research standard.

(5) The bill recognizes that there are circumstances in which the use of anonymous information without individual consent is in the public good and therefore permitted.

ICES absolutely agrees that any research that involves direct contact with individuals or which directly impacts upon the care of individuals requires informed consent. However, there are some circumstances in which consent is not possible because of the huge number of individuals involved, the retrospective nature of the research and the fact that some individuals will have died. ICES has a 12-year history of doing such research that has helped evaluate and inform the delivery of health care in Ontario and has never had a breach of privacy. We are pleased that the proposed bill allows for the use of de-identified



information without consent in certain circumstances, with approval by REBs. We will now briefly describe the four types of such research that ICES performs.

First, under a research agreement signed in 1997, health information is provided to ICES by the Ministry of Health for the purpose of health-related research. This information is secured in large administrative databases collected by the ministry for other purposes, such as processing service claims for physicians. The information is securely transferred to ICES and stripped of personal identifiers—it is de-identified—using computer algorithms only by personnel named in the agreements. An ICES key number is assigned to each record, replacing the health card number, to facilitate linkage across the databases, allowing the creation of an anonymous longitudinal record of health care experience. This allows us, for example, to study the type and quality of care that all persons who had a heart attack received in a given period of time. By comparing this information with evidence-based benchmarks of care, we can determine areas for improvement, including strategies such as providing physicians with feedback, reallocating resources or recommending changes to the delivery of care.

Second, ICES conducts chart abstraction studies with the permission and assistance of hospital CEOs and medical records staff, using laptop computers equipped with password protection and encryption software. The information is collected by nurses and health records technicians who are ICES employees, have undergone privacy and data security training and have signed confidentiality agreements. They operate under strict policies and procedures to ensure the integrity of the data, which is collected as an anonymous record using a unique ICES study number. This information provides an opportunity to help hospitals improve care and services for patients. The EFFECT study you may have read about in the newspapers and heard about on TV just this past weekend, concerning care of patients who had heart attacks or congestive heart failure in Ontario hospitals, is an example of this type of work.

Third, ICES works under specific research agreements with other research groups, registries or agencies, such as the Cardiac Care Network and Cancer Care Ontario. As an example, ICES staff use anonymized CCN registry information to study access to and the quality of cardiovascular services, including angiography, angioplasty and cardiac bypass surgery in Ontario.

**1410**

Fourth, ICES functions as a data repository, providing data security and management services to organizations such as the Canadian Stroke Network, a multi-million dollar networks-of-excellence initiative to characterize and improve the care and outcomes of stroke in Canadians.

There is, appropriately, great current interest in outcome measurement in health care, and health quality councils of various sorts; for example, Bill 8, which is currently before the Legislature. Such activities can only occur if informed by high-quality information obtained

from the sorts of studies I have just described, and we are pleased that the proposed bill recognizes the importance of such studies.

Next, we would like to comment on sections of the draft legislation. In section 43, research ethics boards have the responsibility of reviewing and approving research plans before authorizing the disclosure of personal health information to researchers. We support this duty of REBs, and all studies performed at ICES are reviewed by an independent REB.

However, Canada lacks a legislative framework for governing and accrediting REBs. Therefore, we draw the committee's attention to the fact that in Ontario any group of individuals could declare themselves to be a REB and approve the research plans for uses of personal health information. As researchers, we find that hospitals vary widely in terms of the formation of their REBs, membership, policies and procedures, including the charging of fees to researchers. We are aware that private for-profit organizations also form independent research boards to review and approve studies. We look forward to the delineation and definition of standards regarding the composition, governance and impartiality of REBs, and the timeliness of their deliberations, in the revisions to the bill.

We agree with subsection 43(5) requiring researchers to enter into agreements with the health information custodian before personal health information is released. This includes the provision that the health information custodian should not give the researcher permission to use the same information for any other research unless an REB approves the other research. The agreement should include a date for the destruction of the data following the completion of the research.

We support the concept of the health data institute—section 45—as an agency separate from the ministry that could provide anonymized versions of linked health information to researchers. We have met with representatives from the ministry previously to discuss how health care information should be made more accessible for both monitoring the health system and supporting grants funded by peer-review granting agencies. Currently, many legitimate Ontario health researchers, working on important projects, cannot get access to these types of health information in a timely fashion. Because many Ontario researchers have difficulty accessing Ontario health information, researchers from other provinces have a competitive edge over Ontario researchers when submitting proposals for population health, health systems and policy studies to the Canadian Institutes of Health Research and other funding agencies. Therefore, we support a data institute that would make health data more accessible for research by scientists at Ontario universities, within the ministry and elsewhere, thus better utilizing the scientific intellectual capital of our province.

We are concerned that section 48 potentially restricts the disclosure of health information outside the province, even when used in the research context, because of the



requirement of consent, which is impossible when dealing with the entire population of Ontario. This would preclude Ontario's participation in highly important national initiatives, such as the interprovincial health services comparison studies called for in the Romanow and Kirby reports, and would not allow us to take advantage of "natural experiments," such as evaluating the impact of different provincial funding decisions regarding drugs upon patient outcomes. These types of initiatives are only possible when collaborative research is supported by information flow across provincial borders.

We would like to conclude with a comment about how ICES could be named under this legislation so that our important work can continue. Taking into consideration the many types of research that ICES engages in, ICES could be named under one or more of six categories in this legislation, including health information custodian, non-health information custodian, health data institute, researcher, registry, and agent. Other than health information custodian and non-health information custodian, these categories are not mutually exclusive, and the requirements and responsibilities of each of these categories are sometimes contradictory. Importantly, how our collaborating partners and agencies, such as Cancer Care Ontario, are categorized in Bill 31 will also have an impact on ICES operations.

In the appendix attached to this presentation we have outlined multiple areas that require further discussion with the ministry regarding the prescription, exemption or relief granted to ICES in order to continue to allow ICES to function in its current mandate. We look forward to clarifying these issues with the ministry in the near future.

In conclusion, we are pleased that the ministry has developed privacy legislation that deals with health information as a separate entity from personal information in an omnibus bill. Privacy legislation that is sensitive to allowing important quality improvement, performance measurement and research activities is a win-win situation for Ontarians. It is important to ICES that the regulations being proposed are passed in a timely manner, because many of our activities, which are in the public interest, may not be able to continue if regulations are not in place at the same time as the Health Information Protection Act, 2003, comes into force, if passed, July 1, 2004.

Thank you for your attention.

**The Vice-Chair:** Thank you for your presentation. We will begin with the official opposition for three minutes.

**Mrs Witmer:** Thank you very much for your presentation. I've always appreciated the research that ICES has undertaken. You talked about how you could be named under this legislation and you suggested there are possibly six, I guess, categories. Do you have a preference? Have you discussed with the ministry what would be the most ideal for you to be able to continue the work that you're presently undertaking?

**Dr Laupacis:** We've not yet had discussions with the ministry about this. We've had the opportunity to discuss this with our legal counsel, who were instrumental in putting together the appendix, and we would see having our legal counsel and the ministry get together to sort out the details of that, to be honest.

Pam, do you want to comment further?

**Ms Pamela Slaughter:** I think that one of the dilemmas we have around this is that there are six categories but we also do five different kinds of research and we have multiple partners. I have envisioned this as a kind of a Rubik's Cube. As everybody moves around and is prescribed or named, it has different impacts. Therefore, these have to be examined very carefully in the context of all the other organizations that ICES works with to do the research in the province.

**Mrs Witmer:** So where would you see yourself being named? Like, at what time?

**Ms Slaughter:** I think that we're going to have to wait to hear how the other organizations, such as Cancer Care Ontario, the Cardiac Care Network and others, fall out in their discussions with you. At first blush, it seemed like the health information custodian, with some relief in other sections, was going to work well, but the more that we reviewed this with our legal counsel the more convinced I became that we had to examine this in a much closer context in relation to these other partners.

**Mrs Witmer:** Just one other question: You mentioned in the last line about the coming into force of the Health Information Protection Act on July 1, and some concern that if this isn't passed in a timely manner there is a problem. We've just heard from the last group that if this were to be passed it couldn't be implemented, and I think we all know that. So I guess you're going to have a problem.

**Ms Slaughter:** I think we are because obviously there are some types of research that we're doing that will be able to go forward, and others will not, that we will be able to disclose findings in some capacities and not in others. We will be able to share findings, is more my meaning than anything else. So, yes, it will constrain activities.

**Ms Martel:** Thanks for being here. Do you mind just going through with me in a more concrete way, if you can, examples of how you're classified or categorized is going to have an impact one way or the other, especially in relation to other organizations you deal with, like CCO? I'm trying to really understand why this is such a critical issue.

**Ms Slaughter:** I'm not a lawyer.

**Ms Martel:** Neither am I, so there you go. Mr Kormos is.

**Ms Slaughter:** We were very extensively briefed by our legal counsel on this. It mostly comes down to issues constantly of what you can do with the data once you've received it. As health information custodian, when the ministry gives us data to use there are certain things that we can do and cannot do with that data. We can receive data from health information custodians but, for example, could we in fact receive data from registries? If we use



the data from registries, could we use it using our algorithms for linkage to link them together to provide them with the outcomes that they are trying to study to improve the health care system?

There are many permutations and combinations of that that are making it difficult to understand comprehensively how we could work all of these issues out, particularly when we're not quite sure how everyone else is going to be prescribed.

1420

So for example, if Cancer Care Ontario or the Cardiac Care Network were prescribed as registries, what we would be allowed to do with those data, unless we were prescribed as a health information custodian or as an agent or just as researchers, we weren't sure.

**Ms Martel:** CCO is prescribed as a custodian as well. Does that solve your problem? Because then there are provisions in the bill with respect to that transfer of information between, for example, two custodians. Does that make things easier?

**Ms Slaughter:** It might make things easier, yes.

**Ms Martel:** So it's a question of how the flow of information is essentially going to work.

**Ms Slaughter:** That's right, and also how we're going to be able to disclose it at the other end, because in the context of a health data institute, for example, my understanding from the bill is that the data can go back to the minister, but it can't be communicated elsewhere. So if you had data that was used for project X, one of the things that ICES has always done is publish findings independently in the peer review research and as reports which have always been placed in the public sphere as well. In that particular context, that would not be able to happen because the last clause precludes disclosing.

**Ms Martel:** OK. We need to do some more work on that.

When you talked about, "There aren't really strict criteria around who is an REB," if that was done by regulation, versus actually somewhere in section 43, or wherever it is, would that resolve your concerns as well? I mean, essentially what you're concerned about is what are the criteria around how they're set up, established etc.

**Ms Slaughter:** Absolutely.

**Ms Martel:** All right. Thanks.

**Ms Wynne:** Presumably, one of the things you're concerned about is ongoing research and the concern about completing—the transitional clause that's in here, subsections 43(12) and (13), do they meet the test for being able to continue the research that's ongoing now?

**Ms Slaughter:** I'm sorry, I don't have the bill with me.

**Ms Wynne:** OK. It basically says that there's a transition period. So research that's ongoing now would be able to continue, I think, for one year after the day this section comes into force. So you'd be able to complete, presumably, what's on the books. Is that section of concern to you, or not?

**Dr Laupacis:** Frankly, I'm not familiar with the details of the section, but obviously if we have a year to

continue to finish our research, that's great. I mean, some of our projects take longer than a year.

**Ms Wynne:** So given that there is a transition, your concern is then that you're not going to be able to do certain kinds of research that you can do now, right?

**Dr Laupacis:** Our concern is to make sure that this legislation is written in such a way that we are able to continue to do the kind of research that we do.

**Ms Wynne:** Right.

**Dr Laupacis:** We have been advised by our legal counsel that there are some concerns about the way this is written that would preclude that.

**Ms Wynne:** The issue of your privacy procedures—can you talk about your privacy practices?

**Dr Laupacis:** Sure, if you'd like. Pam would probably be the best person to do it.

**Ms Slaughter:** We have an awful lot of data security in place. ICES is located in a building that is very heavily secured. You can only move around the building with coded keys. Access is restricted. It's on a do-you-need-to-be-in-that-area type of coding. Everyone who works at ICES undergoes privacy orientation, data security orientation. We annually sign confidentiality agreements. The data itself is on a moated server. It has no external connections, so it can't be hacked into.

We routinely do audit functions internally. We make privacy and have made privacy the most important part of our culture, quite frankly, since inception in 1992. We have cameras in our halls and cameras on our roofs. We have policies and procedures for who has what kind of access to data. The data's anonymous, but even so, the data sets for use are cut specifically to projects and even the levels of data that are available are very much predicated on, "Do you really need this data to do this type of project?"

Everything that we do is reviewed by the research ethics board at Sunnybrook and Women's College, even the use of anonymous data, which at least until this point has exceeded the standard. We already develop proposals and do privacy impact assessments on all projects that are being contemplated before they're allowed to go forward.

**Ms Wynne:** Just a last question: When you suggest that your organization be named, you're obviously talking specifically about your organization, but are there others that you would sort of be making a categorical recommendation on, or are you unique?

**The Vice-Chair:** Just a short response; we're a little bit over the time.

**Ms Wynne:** Sorry, I went over my time. Can I get the answer? OK, great.

**Ms Slaughter:** I think there are an awful lot of organizations that are extremely important to the citizens of Ontario that also do research using data in the ways we do, and I know they are presenting to you, so I would rather not speculate.

**The Vice-Chair:** Thank you very much for your presentation.



CANADIAN MENTAL HEALTH  
ASSOCIATION,  
ONTARIO DIVISION

**The Vice-Chair:** The next group is the Canadian Mental Health Association, Ontario Division.

**Ms Patti Bregman:** My name is Patti Bregman. I am the director of government relations and legal counsel for the Canadian Mental Health Association at the provincial level. I want to apologize: Our president, Neil McGregor, tried to get here from Niagara and got caught in the weather, and our CEO is under the weather, so you have me. It's been a bad day.

It's actually quite helpful to present after the Centre for Addiction and Mental Health. I think we in the mental health sector all work very closely together. Like their presentation, we will likely submit an addendum to this brief. The legislation is quite complex, and I think a number of the issues that have been raised need to be addressed further so we can help the ministry come up with some solutions.

I want to start first, unusually, on a personal note. You need to know that I am probably one of the people in longest standing trying to get privacy legislation in the province. So if I appear passionate, it's because I worked for the Krever commission on the confidentiality of health records, which started in 1977 and recommended health privacy legislation in 1980. Since that time, I have worked in a whole variety of settings, including the ministry. So I am personally delighted to see that the government has responded and moved forward so quickly.

As an organization that has tried to deal with the morass of mental health regulations that currently exist, we are also very pleased that the government has moved forward with legislation that we think on the whole has achieved that balance between the need to protect the privacy of individuals and the need of health care providers to use the information. As you heard, mental health information is particularly sensitive, and the concerns we have expressed in this brief are going to relate primarily to those.

To tell you a little bit about the association, in addition to a provincial office, there are 33 local branches that provide a range of services. Some very small branches may have grief counselling, support groups and education, whereas our Toronto branch, for example, provides \$8 million in services—including case management, direct service—in conjunction with the Centre for Addiction and Mental Health, and to the greatest extent possible across the province, there is this increasing trend to try to work together. So from our point of view, the legislation is particularly timely.

It surprises many people to know that at the moment there is no legislation that protects the information held in community mental health agencies. The common perception is that the Mental Health Act and form 14 are commonly used to protect the information in community mental health agencies. That's not in fact the case. There

is no legislative provision right now, so we consider this legislation particularly important. While our branches have always worked very hard and have long had policies to ensure that information is protected and that it's not shared, we have not enjoyed the legislative protection that I think gives that added benefit to our clients.

For the reason, we are also pleased that they have adopted a recommendation we made to previous versions and brought all mental health information within one act. In previous versions, the Mental Health Act was going to continue to cover that information in the hospital sector and the community sector would be covered under different legislation. That would only exacerbate the problems we currently face, so we're trying to share information and develop a more integrated system.

1430

In terms of our recommendations, I'm going to just focus on a couple of them so there's time for questions. Perhaps it's unfair to burden the committee with the ones I'm not sure we actually have the answer for, but I think it's helpful for you to understand from our perspective where we see the challenges.

At a start, one of our concerns is in fact the regulation-making authority. In every version of the legislation there has always been this give and take between the ability to protect the information and the ability to then disclose information very widely as every group comes before you and explains why they are the group that absolutely must have information. If you have a mental illness, this is more than just sharing information that may be a little sensitive.

People face discrimination every day because they have a mental illness. I think we saw examples of that in the recent upset over the Liberal Party questionnaire that required disclosure of mental health status at the federal level, which the Liberals very quickly withdrew, and we appreciate that. But I think there is that sensitivity in the public, and it should not be discounted. We are somewhat concerned that the regulation-making authority allows quite extensive exemption from the coverage of the legislation. We just urge you to keep an eye on making sure that the regulations are not so broad that they can undermine the legislation itself.

The second point, on the scope of the legislation, was actually raised by the Centre for Addiction and Mental Health. We haven't had a chance to talk together, and I think we'll have our own conversation about how to resolve a somewhat different approach. From our perspective, at least when I read the legislation, the definitions of what falls within a community mental health program are quite broad. Even within health care, it's much broader than the usual definitions of health care. Our concern, though, is: The mental health task forces, and we in our own community, are trying to bring together housing providers, employment supports, direct services such as community treatment teams and primary care. If this legislation segregates different organizations and has different standards, that integration of services may be somewhat more difficult.



The Centre for Addiction and Mental Health's proposal was, in a sense, to have a very limited designation of those groups for the purpose of discharge planning. Our recommendation at the moment is that the regulatory power be used to designate those programs which are like programs provided by community mental health agencies that are broader in scope. I guess what I mean is that if there is a housing and employment supports program attached, for example, to the Toronto branch, which also provides services that are clearly with health care, then those services—the employment supports and housing—would be within the scope of the legislation. If it was a free-standing mental health housing support agency, it might not come within the scope of the legislation. I think that is a recipe for confusion, and we need to find a way to address that to ensure that all similar types of programs are subject to a similar type of regulation, whatever that may be at the end of the day, and we can discuss that later.

Terms of accountability and implementation: I'm actually going to skip over that—I think it's relatively straightforward—and move on to where I think the biggest concerns are. That relates to both consent and, more importantly, substitute decision-making. So if we skip to page 9, we're pleased that the legislation has adopted the substitute decision-making regime that is in the Substitute Decisions Act and the Health Care Consent Act. This is a very complicated regime, and we have spent a lot of time and energy educating people about what capacity is, how you deal with problems of capacity and who makes substitute decisions.

We have a couple of very technical recommendations, just because there are slight inconsistencies between the two acts. I think what is more complicated for us—and I've been working with our local branches to come up with some solutions—is really how this capacity designation is going to be dealt with. When the health care consent legislation was drafted and capacity was looked at, there is always an interaction between the individual and the provider. It's very clear: The health care provider talks to the individual, they can assess the capacity and make a determination.

When you are talking about giving consent for the disclosure or collection of health information, that person and the person who has the authority to make the capacity determination may never meet each other. The request may be in writing. So for example, if I need information disclosed for my employer, I will send a letter to my doctor. I'll send a written consent and say, "Please disclose this information for X purpose." The health information custodian has absolutely no way to determine if I'm actually capable of making that request or not, and yet the legislation seems to suggest that there is that obligation on the health information custodian.

The second example that I started to think about was what if I'm sitting in one doctor's office and say, "I want to transfer my information"? That doctor thinks I'm capable. The doctor at the other end says, "Oh, I know that person. They're not capable." How do we resolve

that? There's nothing in the legislation, and I don't think we would support this, that requires somebody to come for a capacity assessment for routine transactions.

The other problem related to this is that the legislation designates the health information custodian as the person to determine capacity. The health information custodian isn't actually a natural person in most cases. It certainly wouldn't be in the Canadian Mental Health Association. There's nothing that talks about who would do it in the place of a corporation, and clearly a corporation is not going to assess capacity. So I think this is an area that has a value because it is very important to address these issues, but as drafted it really addresses only the issue of capacity as it relates to a health care setting where there's direct interaction. I think something needs to be done to make sure we don't get bogged down in very cumbersome processes or intrusive processes for routine transactions. We've made some suggestions, but we'd be pleased to work with the ministry to try and address those issues.

I think there are some other recommendations that are more straightforward in terms of the ability to review findings of incapacity. The requirement that a person should be advised that they've been found to be incapable and have a right to appeal that decision are fairly straightforward.

The final point I want to make is one that the Centre for Addiction and Mental Health started with, and that is the implementation. As Mrs Witmer knows from the implementation of Bill 68, it takes a long time to go from the passage of legislation to actually putting it into effect. We had a very short time frame with that legislation and very few resources, and it showed. There were a lot of missteps in how the legislation was implemented, and there remains a lot of confusion.

So I think while we would certainly support some extension of the time for implementation, we also think it's important that there be a clear mandate and funding attached to education. If there is no centrally organized and funded education process, the result is that organizations like ours, which are very scarce in resources, end up having to develop their own forums, their own education, and spend very scarce staff resources to go out and do the training.

We have a very high standard in our Information and Privacy Commissioner. I think they do excellent work, and we would certainly support providing them with a direct mandate and the funding to do education prior to implementation.

I'm going to stop to allow for questions.

**Ms Martel:** Thanks very much for coming today. Just on the last point, and I may have read this wrong, but I thought that the FOI commissioner was going to have some obligation around the educational programming here. It's not clear to me what the funding is going to be, so that's a critical issue.

**Ms Bregman:** Yes, that's our point. Our point is that it has to be not simply to give them a general mandate. It



has to be clear that there needs to be a program in place and that the funding needs to be attached to that.

**Ms Martel:** Let me go back to the regulations, because you expressed concerns around this area. Can you give us some examples, Patti, of what are the ones that are bothering you?

**Ms Bregman:** The ones that I think bothered us are similar to the ones that have bothered us in previous versions, and that is that the regulation-making power allows for regulations that would actually exempt classes of providers from the legislation, or classes of information from being subject to the legislation. So in a sense what it does is allows the creation of subsets of regulatory structures. I think there is one protection that has not existed in previous versions, and that's the fact that there is a public notice provision, and I think that's very important and does give us some level of reassurance that if there was an undermining of the legislation through regulation, it would be adopted.

1440

Our recommendation is that there be a provision added to the regulation with authority basically saying that no regulation can be made that's inconsistent with the purpose of the legislation, which is to protect the privacy of personal health information, so at least there would be some measure against which the regulation could be checked. I think that would be sufficient to constrain this unlimited regulatory-making power. So those two together would give us a level of comfort and we'd be happy to go forward with this.

**Ms Martel:** Is this coming as part of the addendum that you spoke of, or is that—

**Ms Bregman:** It's in here, but I think we will probably work on addressing this.

**Ms Martel:** This goes to the timelines, and maybe it's more a question of having the financial resources to make it happen for your organization. I'm not saying that's the same for CMHA, but we've been around the track on this a lot of times. There has been a consultation paper and draft legislation every time there have been changes that have tried to deal with the concerns. So I understand that. But part of me says that at a certain point, we've got to get this in place.

**Ms Bregman:** Absolutely.

**Ms Martel:** So in your concern with the timeline, does it have more to do with your ability as an organization, speaking for Canadian mental health, to be able to train your staff and find the financial resources to understand what their obligations are? Do you also, though, have concerns with databases and financial costs? I don't know what kind of data you keep and what kind of situation it's in, but is that another concern that we need to deal with?

**Ms Bregman:** The real concern—I have to be honest. Community mental health is so significantly underfunded that we have many branches that have no computers, so we don't have the same kind of data problems. I wish we did. Our problem is simply a matter of training and getting the regulations into place that are necessary to make this work.

**Ms Wynne:** These are not two recommendations that you mentioned, but in your submission, Patti, you talk about them being of greatest concern in terms of implementation, so I'm just wondering, in recommendations 8 and 9: You want changes to the definition of, in 8, "spouse," and in 9, "relative." I'm just not clear why. You want them to be in line with other acts, but—

**Ms Bregman:** Basically, what this legislation has done is adopt the health care consent framework for giving consent and substitute decision-making, which is wonderful. In fact, if somebody is a substitute decision-maker for treatment, they're deemed to be a substitute decision-maker for consent. The problem is, and I'm not sure if it was drafting or just error and unintentional, the definitions are different, so what might happen is that you actually end up with two different people or barriers that prevent a person from being a substitute in one case. So these I see as pretty technical. There's not really a policy change.

**Ms Wynne:** So what you really want is the definitions to be the same. If this current definition actually is better than the definitions in the other acts, you're not worried about—

**Ms Bregman:** Yes. They're not really policy issues. They're very practical, kind of pragmatic things that should be easy to fix.

**Ms Wynne:** OK, thanks.

**Mrs Witmer:** In taking a look at this, Patti, overall, CMHA is pleased with the legislation. You've had an opportunity to respond on numerous other occasions. At this point in time, you have some recommendations, which really are quite minor. You're looking for consistency with other pieces of legislation.

Is there anything in your summary of recommendations, and I think they're well done, that absolutely has to be changed, would be your number one priority?

**Ms Bregman:** I think there are two. One is this whole issue of defining what programs are in and out, because that will be a huge implementation issue. The second is this capacity question, because I see that as creating a huge morass that is unnecessary. I think it can be resolved.

But I think, as you said, this really built on the legislation that you introduced earlier and, we're pleased to say, incorporated a great number of the recommendations we made in response to that legislation, so we certainly would support moving forward with this as quickly as possible.

**The Vice-Chair:** Thank you for your presentation.

#### COLLEGE OF MEDICAL RADIATION TECHNOLOGISTS OF ONTARIO

**The Vice-Chair:** The next group is the College of Medical Radiation Technologists of Ontario.

**Ms Sharon Saberton:** Good afternoon. I'm Sharon Saberton. I'm the registrar at the College of Medical Radiation Technologists of Ontario. With me today is our legal counsel, Debbie Tarshis. Our president, Sheila



Robson, was unable to make it because of the weather. We're very pleased to be able to make this submission to you today.

The College of Medical Radiation Technologists of Ontario, or the college, is the regulatory body for medical radiation technologists in Ontario. Our mandate is to serve and protect the public interest through self-regulation of the profession of medical radiation technology. It is the role of the college to protect the public of Ontario from practitioners who breach professional standards or are incompetent or unfit to practise.

The college understands that the purpose of the Personal Health Information Protection Act, 2003—and I'm going to from now on call it PHIPA—is to provide consistent and comprehensive rules governing the collection, use, retention, disclosure and disposal of personal health information in the custody and control of health information custodians. We also understand that the goals of the legislation are to protect the privacy of individuals and the confidentiality and security of personal health information in the health sector in a manner that facilitates the effective provision of health care.

We appreciate the challenges of creating consistent and comprehensive rules for organizations that collect personal health information. Through this submission, the college wishes to assist the government in understanding the ways in which the protection of individuals' privacy and facilitating the effective provision of health care intersect from the point of view of the college. The college firmly believes that facilitating the effective provision of health care includes ensuring, for the public of Ontario, that health practitioners are qualified to practise, and practise in accordance with professional standards, and protecting the public from practitioners who breach professional standards or are incompetent or unfit to practise.

Next I'd like to present a summary of our main comments and recommendations.

(1) The college supports the government's initiative to provide clear rules for the collection, use and disclosure of personal health information in the health sector.

(2) The college is pleased that a number of the concerns that the college expressed in previous consultations appear to be addressed in PHIPA. Specifically, the college is pleased that the college has not been included in the definition of "health information custodian" and that specific provisions permit health information custodians to disclose personal health information without consent to the college for the regulatory purposes of the college. This information is essential so that the college can protect the public from harm.

(3) The college supports the recognition, under section 47, "restrictions on recipients," that legislation such as the Regulated Health Professions Act, or RHPA, may permit or require uses or disclosures that are different from the purposes for which the health information custodian disclosed the information to the college.

(4) The role of the college in regulating the profession of medical radiation technology is to ensure for the

public of Ontario that medical radiation technologists are qualified to practise and practise in accordance with professional standards, and to protect the public from unprofessional, incompetent and unfit practitioners. PHIPA provides that it is paramount to any other legislation in the event of a conflict. This paramountcy provision causes a significant concern for the college. There are several potential conflicts and inconsistencies between PHIPA and the RHPA. The college is concerned that the potential conflicts and inconsistencies between PHIPA and the RHPA will create confusion and unintended consequences regarding the college's regulatory role and will involve the college in proceedings before the courts while inconsistent and conflicting provisions await judicial interpretation. This would have a negative impact on the protection of the public from harm.

We have a recommendation: that, in order to avoid conflict and inconsistency between PHIPA on the one hand and the RHPA, the code and the MRT act and other health profession acts on the other hand, a complementary amendment be made to the Regulated Health Professions Act to the following effect:

In the event of a conflict between a provision of the Personal Health Information Protection Act, 2003, or its regulations and a provision of the Regulated Health Professions Act, 1991, or an act named in schedule 1 to that act or their respective regulations, the provisions of the Regulated Health Professions Act, 1991, or the act named in schedule 1 to that act or their respective regulations prevail.

#### 1450

Now I'd like to talk a little bit about the role of the regulatory college, our college, the College of Medical Radiation Technologists of Ontario.

This college is the regulatory college for the practice of medical radiation technologists in Ontario. It is one of the 21 health regulatory colleges governed by the Regulated Health Professions Act, RHPA, and the health professions procedural code. The health-profession-specific act that established this college is the Medical Radiation Technology Act, 1991. We call it the MRT act. The college has approximately 5,500 members in the profession of medical radiation technology.

The primary duty of the college in carrying out its objects is to serve and protect the public interest. The objects of the college include:

—To regulate the practice of medical radiation technology and to govern the members in accordance with the MRT act, the code and the RHPA and the regulations and bylaws, including investigating and prosecuting allegations of professional misconduct, incompetence and incapacity.

—To develop, establish and maintain standards of qualification for membership in the college.

—To develop, establish and maintain programs and standards of practice to ensure the quality of the practice of the profession.

—To develop, establish and maintain a quality assurance program to promote continuing competence among the members.



—To administer the MRT act, the code and the RHPA as it relates to the profession.

Under the MRT act and the code, there is a registration process for determining whether an applicant meets the qualifications for membership in the college in accordance with the requirements of the MRT act, the code and regulations made under the act. There is a process for complaints and mandatory reports to be filed with the college. There is a complaints committee whose responsibility it is to consider and investigate complaints regarding the conduct or actions of members of the college. Matters may be referred to the discipline committee for a hearing to determine any allegation of professional misconduct or incompetence on the part of a member of the college. Matters may be referred to the fitness-to-practise committee for a hearing to determine any allegation of incapacity on the part of a member of the college. The college has published standards of practice for members of the college, to which members of the college must adhere. There is a register of members that provides information to the public about the members, their professional status, any terms, conditions and limitations imposed on a certificate of registration, any notations of revocation or suspension of a member's certificate of registration, results of disciplinary and incapacity proceedings and information directed to be added to the register by a panel of one of the statutory committees of the college.

Now I'd like to tell you a little bit about what our folks do.

The scope of practice of medical radiation technology is the use of ionizing radiation and electromagnetism to produce diagnostic images and tests, the evaluation of the technical sufficiency of the images and tests, and the therapeutic application of ionizing radiation. There are four specialties within the profession of medical radiation technology—radiography, nuclear medicine, radiation therapy and magnetic resonance. Medical radiation technologists in the specialty of radiography use X-rays to produce images of parts of the body on film or on computer screens. The procedures performed by an MRT in the specialty of radiography include chest X-rays, mammograms, barium enemas and CT scans (computerized tomography). MRTs in the specialty of nuclear medicine use low-level radioactive substances which are injected, swallowed or inhaled to produce diagnostic images of how the body functions. Procedures performed by an MRT in the specialty of nuclear medicine include bone scans, cardiac stress testing and lung scans. MRTs in the specialty of radiation therapy treat disease, such as cancer, with radiation in order to destroy diseased cells in the body. Procedures performed by an MRT in the specialty of radiation therapy include radiation treatments by using focused beams of radiation to destroy tumours or by placing radioactive sources directly into the patient's body. MRTs in the specialty of magnetic resonance use electromagnetism, which is static magnetic fields and radio frequencies, to produce diagnostic images. Magnetic resonance imaging procedures play a

significant role in imaging the brain, spine, abdomen, pelvis and musculoskeletal system.

Generally, MRTs are employed in hospitals, independent health facilities and regional cancer centres. Some MRTs own their own independent health facilities such as X-ray and nuclear medicine technology clinics.

Now I would like to talk a little bit about the college's collection, use and disclosure of personal health information.

The college's collection, use and disclosure of personal health information are done in accordance with and as permitted by the MRT act, the code and the regulations and bylaws made under the MRT act. Pursuant to its objects and its public protection mandate under the MRT act, the code and the regulations and bylaws made under the MRT act, the college currently collects, uses, and in some circumstances, discloses personal information about a member without the consent of the member.

Given that MRTs are involved in patient care and treatment, many of the activities of the college which relate to investigating and assessing the practice of a member of the college will involve personal health information of a patient. Under many circumstances, the college collects and uses personal health information with the patient's consent. Under certain circumstances, the college collects and uses personal health information without the patient's consent; however, it is necessary to do so in order to protect the public from harm caused by a member's incompetence, incapacity or professional misconduct. In other words, the purpose for which the college obtains personal health information of a patient or a member is to investigate, assess and, where necessary, impose sanctions on its members in order to protect the public from harm.

It is very important, though, to understand that subsection 36(1) of the RHPA imposes a duty of confidentiality on every person engaged in the administration of the MRT act with respect to all information that comes to his or her knowledge in the course of his or her duties and not to communicate any of those matters to any other person, subject to certain limited exceptions. A breach of this provision is an offence under the RHPA. If a person is found guilty of the offence, there is liability for a fine of up to \$25,000.

In conclusion, the college supports PHIPA and is pleased that a number of the concerns of the college expressed in previous consultations have been addressed. The main concern of the college is that the paramouncy provision of PHIPA will have unintended consequences that will impede the college and other regulatory colleges in their legislated mandate to regulate the members for the protection of the public.

The college recommends that the legislative framework that governs the regulated health colleges prevail in the event of a conflict between the PHIPA and the RHPA and the health professions acts.

Thank you for the opportunity to make this submission to the standing committee and for your consideration of the college's comments and concerns.



**The Vice-Chair:** Thank you. We'll begin with the government side for about two minutes each.

**Ms Wynne:** I just want to try to understand exactly—you've got three recommendations. Is that right? You're making a total of three recommendations?

**Ms Saberton:** Yes.

**Ms Wynne:** All right. Can you just clarify what the impact is going to be in real terms? Can you give me a picture of what's going to be the impact of the change? What is the specific situation that you're concerned about, that you want your recommendations to address? I think I need an example to understand.

**Ms Debbie Tarshis:** One example would be, under the RHPA there is a mandatory reporting obligation for employers who terminate the employment of a member for reasons of incapacity, for example. The RHPA provision indicates that the report must include the reasons for which the termination was made. In this circumstance the employer will have personal health information about the member, and the concern is that if it is not clear that the mandatory duty to report includes or prevails over PHIPA, the member will be able to object to the provision of this information and, in effect, the college will not be able to protect the public from harm caused by a practitioner who may not be fit to practise.

That would be one example of where it would be important for the RHPA mandatory duty to report to prevail with respect to the PHIPA if there were interpreted to be a conflict between the two pieces of legislation.

1500

So the fundamental concern is that a member will try to rely on provisions in PHIPA to prevent the college from regulating the member in accordance with the college's mandate.

**Ms Wynne:** OK. I think that helps. Thank you.

**Mr Yakabuski:** Thank you very much for coming in today, ladies, on such a beautiful day.

As I understand it, in a nutshell, you're pretty satisfied with the bill. It's recognized some of the recommendations you've been making over the years in various attempts to get a piece of legislation like this through. Your one major concern is where there comes an issue between statutes of your own regulatory bodies coming in conflict with the provisions in Bill 31, you would like the pieces of legislation within your own bodies to take precedence over that provided for in Bill 31. Other than that, you're pretty much satisfied with the legislation speaking to the needs of the protection of privacy.

**Ms Tarshis:** Yes.

**Mr Yakabuski:** Thank you.

**Ms Martel:** Thank you for coming here today. I just want to focus on section 47, if I can. I look at page 2, point number 3, which I see is an endorsement—I could be reading this wrong—essentially of that section. Then I flip to page 14, and there are two concerns that are being raised about the same section. I'm just not clear what the amendments are doing, then, if you indicate support in

the first case. Is it just making it very clear that in cases where there could be bodily harm, that's going to be disclosed in a manner that would protect the public—the first provision?

**Ms Tarshis:** Section 47 creates restrictions on non-health information custodians from use and disclosure of personal health information for purposes other than the custodian was authorized to disclose it. The introductory language is: "Except as permitted or required by or under an act of Ontario or Canada...." So we would interpret that as being "except as permitted or required by the RHPA etc." So the exception is very important, because the college does have uses and disclosures that are different from the reason that a hospital, for example, would disclose information to the college. However, the exception for simply "required by an act of Ontario" doesn't cover "required by law." So, for example, if there were a situation where, under a common law, duty to disclose arose for the college, the introductory language of section 47 isn't broad enough.

The second concern relates to subsection 47(2), which is a control on the extent to which the information can be used or disclosed by a non-health information custodian. That doesn't have the exception language as introductory to it. So we're concerned, for example, if a member was in the course of the initial investigation and there was certain information that the college had in its possession—personal health information—that the member would argue that it wasn't reasonably necessary for purposes of the discipline proceeding to use that information for the discipline proceeding. Since there's no exception language, the college is concerned that that subsection could be used by a member to undermine the rule of the college. Ultimately, a court might say, "Well, that's not a reasonable interpretation of subsection 47(2)." But that will have been after lengthy and expensive legal proceedings for the college, which would undermine the college's regulatory role.

**The Vice-Chair:** Thank you very much for your presentation.

## ONTARIO MEDICAL ASSOCIATION

**The Vice-Chair:** The next group is the Ontario Medical Association.

**Ms Wynne:** Do we have your presentation?

**Ms Barb LeBlanc:** Yes, we did provide them to the clerk.

**The Vice-Chair:** You may begin.

**Dr Larry Erlick:** Thank you very much. Mr Chairman and committee members, good afternoon on this lovely spring day. I'm Larry Erlick. I'm a family physician from Scarborough, and I'm also president of the Ontario Medical Association. Beside me is Barb LeBlanc, our director of health policy. I intend to keep my remarks brief so there's time for committee members to ask us any questions they may have.

I would like to begin by expressing my thanks to the government for introducing the two acts that comprise



Bill 31. The OMA recognizes the need to move forward with privacy legislation for the health care sector in Ontario, so we appreciate the introduction of the Health Information Protection Act, referred to as HIPA. Given that we have lobbied for the last 20 years for the introduction of statutory protection for quality assurance information, we are also very pleased to see the introduction of the Quality of Care Information Protection Act.

Those of you who have been involved with the discussions relating to the federal privacy law, PIPEDA, will know that the OMA, along with the Ontario Hospital Association and numerous other health stakeholders, has expressed serious concerns about the ability of the health care system to function under PIPEDA. Unfortunately, the efforts of the health care sector and the provinces to try to solve the problem were completely unsuccessful and the federal government has refused to acknowledge that the health care sector faces unique challenges when it comes to balancing patient privacy against the flow of information required to make the system work.

As it stands, there is tremendous confusion in the system as all the players struggle to understand which, if any, of their activities are captured by PIPEDA. For example, based on the most recent commentary coming from the federal government, it would seem that physicians would be in PIPEDA for their office work but out of PIPEDA for their hospital work, and similar questions and inconsistencies are playing out across the health care sector.

In addition, it seems that the questions and answers provided by the federal government are at odds with the language of the legislation itself. In short, there's just so much uncertainty swirling around PIPEDA that it's taking time and energy away from the delivery of health care services so much in need today. We desperately need a uniform set of rules that will apply throughout the health care system and fit with the reality of practice, and that's why Bill 31 is such a positive step forward.

The OMA believes that HIPA does a good job of adapting fair information practices for patients and for the needs of the health care sector. The best illustration of this point is probably seen when you compare the consent provisions in the federal law and HIPA. While PIPEDA calls for express consent, possibly written, for every new use or release of personal information, HIPA allows for implied consent based on reasonable patient knowledge. Under HIPA, my patients have clear control over their personal health information but the information I need to provide good medical care is not blocked by unnecessary bureaucracy and red tape. On that note, I will say that physicians are concerned about the notion of the lockbox but appreciate the addition of the flag, so that at least we know when we are receiving incomplete information. We will have to monitor the lockbox to see how it actually functions in practice and whether it affects our ability to deliver appropriate health care.

1510

The government is also to be congratulated on its innovation in the introduction of the data institutes that

will be used to de-identify patient information before it goes to the government for planning purposes. The OMA believes that this is an important step forward and should be monitored with a view to expansion. It seems to us that this is an important privacy tool and that it might be used in the future to cut down on the movement of identifiable patient information in the system, especially for things like research, where patients are not necessarily aware of the uses being made of their personal information.

The OMA does have a number of comments and significant recommendations with respect to Bill 31 which will require attention, and we will put them forward in our written submission, once approved by our board later this week. As part of our process, our board must sign off on the written submission. I apologize that we don't have it here for today, but it will be forthcoming within a couple of days.

I would like to note for this committee, however, our concerns about the extensive regulation-making powers found in the bill. They are so wide-ranging that they allow the government to change virtually any aspect of the law by regulation. This is contrary to the traditional division of legislative and regulatory authority and represents an intrusion of the government's executive powers into the lawful powers of the Legislature. Not only does it create the power to completely undermine the content of the act, it undermines the democratic process of the Legislature. We recommend that this committee review the proposed regulatory-making powers closely with a view to significantly curtailing them.

Implementing HIPA will pose some fairly substantial challenges for the health sector, and the OMA recommends that the government develop a formal process to coordinate implementation strategies that involves the privacy commissioner and stakeholders. If the government doesn't do it, we fear that the confusion that has been characteristic of PIPEDA will spill over into our provincial privacy activities. The OMA, for one, would be pleased to work with our partners to make the implementation of HIPA as smooth as possible so as to avoid a repetition of the mess—and I do mean a real mess—that occurred with the implementation of PIPEDA.

I would like the committee to know that your civil service has done an excellent job on your behalf throughout the process. We believe the accessibility and responsiveness of the staff involved in the privacy file, both at the Ministry of Health and Long-Term Care and the Ministry of Consumer and Business Services, is a model that should be copied as other legislation is brought forward that affects the health care sector.

We look forward to ongoing consultations as our amendments are considered and the final draft is prepared.

In closing, I would like to reiterate my support for the principles established in Bill 31, thank the government for introducing Bill 31 so early in its mandate and urge you to move forward with its passage and proclamation at the earliest possible date.



Thank you for the opportunity to address you today. We would be pleased to answer any questions you may have.

**The Vice-Chair:** You're allowed four minutes, Mrs Witmer.

**Mrs Witmer:** Thank you very much, Dr Erlick, for your presentation. I'd like to go back to the comment you made about the lockbox, the fact that there are some concerns about the incomplete information that could be received. We heard from an earlier presenter that it certainly could have an impact on the health and safety of a patient. Are there any other concerns that you wish to share with us? It says here that you're going to monitor it. What recommendations have you thought about that the government might introduce to overcome the concern about the safety of the patient?

**Dr Erlick:** I'll turn it over to my expert beside me.

**Ms LeBlanc:** We've really not developed formal recommendations in our written submission, mainly because we know that PIPEDA has a lockbox function and we're concerned about the substantial similarity question. That's why we're suggesting that it be made a formal part of the three-year review function that occurs so that we can understand exactly how it's functioning in practice and whether or not there are in fact any practical problems arising.

**Mrs Witmer:** So, then, you're saying that in the interim you'd be prepared to see how it functions over three years before any changes would be made?

**Ms LeBlanc:** Yes.

**Dr Erlick:** Our issues are in terms of when physicians are asked about the health of a patient in an emergency situation, particularly when a physician is called at his office, yet there is a disclosure denial by the patient, who wishes that certain information be kept. That could endanger the risk. When we say "monitor," we obviously have clinical monitoring and feedback from our members as to difficulties they're having both providing care and putting their patients at risk.

**Ms LeBlanc:** Just to elaborate, we think that in a true emergency situation there are other provisions in HIPA that would prevail. We hope and think that the lockbox would only occur in the general course of non-emergency care.

**Mrs Witmer:** I think we'd all hope that it would, if it had to do with the life and safety of a patient.

You express your concern about the extensive regulation-making powers of the bill. I think this is certainly a concern that has been expressed by others, in that it does give certainly a lot of power to the minister to make regulations in the short term. What suggestions would you have as far as the regulation-making powers? How would you change them?

**Ms LeBlanc:** We will enumerate those in our written submission, but essentially we would suggest that fundamental terms that are critical to the legislation and how you read it and interpret it should not be subject to regulatory change. Furthermore, we think the fact that there is this three-year review means that if there are some terms that we discover require amendment, that's

an opportunity to do it. We are going to provide a list, but, generally speaking, the issue is ensuring that matters of substance remain defined in the core body of the legislation.

**Mrs Witmer:** The third one is implementation. We've heard this afternoon some concern about the timeline for implementation. Is it your opinion, given the changes that are going to be necessary to a lot of systems and the education that's going to need to be provided, that July is a realistic date of implementation, or would you agree with some of the others who think it maybe is going to require possibly a year for implementation?

**Dr Erlick:** PIPEDA is a mess.

**Mrs Witmer:** Yes.

**Dr Erlick:** As it stands, we have advised our members, all 25,000 physicians, to essentially function under the rules they lived by before PIPEDA was proclaimed. We've had discussions with the College of Physicians and Surgeons. The level of privacy that we think we guarantee at present of our patient records and information is more than adequate for security of their information, as well as allowing us to provide appropriate care. My understanding is that there is a six-month window, and Barb can correct me if I'm wrong. We really would like to see it done quickly.

The issue really is a disjointed introduction. We're quite prepared to sit down right away and start, based on our understanding of where PIPEDA has failed—we have been working extensively in trying to get that legislation effected and recognized for a couple of years—but at the same time work out a process that the government must control. Multiple stakeholders trying to interpret without clear direction and structure is part of the reason why PIPEDA is such a mess. We think it's urgent that we have provincial legislation in place that supersedes the federal legislation. A year would not be acceptable to us. By then, we would be having to deal with two different pieces of legislation.

**Mrs Witmer:** Thank you.

**Ms Martel:** Thank you for being here today. You've committed that you're going to be sending us a more extensive brief, and we appreciate why we don't have it here before us today. Do you want to just give us some idea of what's coming, because I gather that you have had some chance to look at this. We've heard a number of concerns from a number of quarters here today, and it would be useful if you could just give us some idea of what's going to happen next.

**Ms LeBlanc:** At the risk of titillating without providing any content, I think most of our amendments focus on regulatory powers, decreasing bureaucracy, tweaking the legislation to provide a little more flexibility in practice. For example, small things like designating your contact person: At present, it's all or nothing. We think physicians might like to retain some of the powers of being a HIC for themselves but delegate certain other powers. It's simple things like that.

1520

One of the more substantial issues is powers of the college. We think the legislation does intrude in certain



areas, like fee setting, on powers that are presently regulated by the colleges, and we would suggest that it continue to be regulated by the colleges and would propose certain amendments and deletions along those lines.

**Ms Martel:** So would that include the college setting a fee, for example, if you were trying to get access to information?

**Ms LeBlanc:** Correct.

**Ms Martel:** That's set now by the college. Is that the same with other colleges, as well?

**Ms LeBlanc:** Yes, it is.

**Ms Martel:** So what you would like in place is essentially an amendment or regulation that says that whatever prevails, and I guess it would be through the RHPA then, would continue to prevail.

**Ms LeBlanc:** Yes. We do recognize that there will be other HICs who are not captured by the Regulated Health Professions Act, so we recognize that they will need some regulation-making powers applied to them. But we're going to propose that, for professionals who are already captured through the Regulated Health Professions Act, the regs not apply to them.

**Dr Erlick:** There are also issues about the medical record itself. The medical record, apart from being the documented interaction of both the physician and the patient, is also a billing record for the purposes of audit. It's also a recognition of everything that transpired. There are some minor comments about deleting, selecting, cutting out, keeping separate parts of a record that someone may have objection to. Physicians, we don't believe, should alter their record at all. Legally they shouldn't be altering their record, because it is a record of transaction and a record of audit. So there are some recommendations on that. There are also some recommendations in the quality assurance part of expanding the definition and which groups are included under that umbrella and what protection is provided to physicians during the quality assurance reviews.

**Ms Martel:** So that would be the second part of the bill, or schedule B. The recommendation there is a change in the definition—let me just flip to it.

**Dr Erlick:** I apologize, but our processes are such that the board would not be happy if we gave you the actual written text, because they may add to it. They are in the midst of reviewing it at the board this Wednesday and Thursday. So I definitely can assure you that you will have your copies by the end of the week.

**The Vice-Chair:** To the government.

**Ms Wynne:** Thank you for being here. I wanted to go back to the regulatory process. You are concerned about the power that the bill gives to make regulations. Is that mitigated at all by the timeline for public consultation, the 60-day window? Can you comment on that part of the process, the fact that there's a 60-day consultation process when the regulations are going to be changed.

**Ms LeBlanc:** While of course we welcome with open arms the opportunity to have some input into the regulation-making process, at the end of the day the govern-

ment may proceed regardless of what that input is, and further, there is some authority for the minister to proceed on his or her own accord. So it's a nice procedural step, but substantively we just think the reg-making is too broad.

**Ms Wynne:** OK. Is this part of what you don't want to talk about, the specifics, because you want the—

**Ms LeBlanc:** Unfortunately. Sorry.

**Ms Wynne:** OK, that's all right. Dr Erlick, could you speak specifically to how you'd like that power reined in?

**Dr Erlick:** I apologize. It'll be coming.

**Ms Wynne:** OK. I guess we'll have to wait for the document with the specifics in it. Thank you.

**Dr Erlick:** All I can assure you is that in the document that will come we have in detail explained the rationale for our recommendation, why we think it should be changed and on what basis we're basing our suggestion, as opposed to just providing you with an amendment. I think it will be fairly clear. But our legal counsel is available any time to continue working forward to explain those.

**Ms Wynne:** I just want to be clear; you're also concerned about the interaction between this act and the Regulated Health Professions Act. Is that true? You're going to be making comments on that?

**Ms LeBlanc:** Not with respect to the act per se, because I know the previous speakers talked about that. Rather, we're just talking about some of the powers of the college to regulate in certain areas, mainly around fees.

**Ms Wynne:** Because there is provision in this act for where it is in conflict with or where there is perceived conflict with another act that the other would prevail. So some of that is covered.

**Dr Erlick:** The issue really revolves around insured and non-insured services. As a matter of rule, all insured services are determined by the Ministry of Health and Long-Term Care, either through a schedule—

**Ms Wynne:** Part of the fee schedule, right.

**Dr Erlick:** Non-insured services are self-regulatory, and the guidelines for application of those non-insured services are done both through the OMA, which provides an uninsured billing guideline, as well as by the College of Physicians and Surgeons, which establishes the appropriate processes for a physician to charge and advise a patient of those charges and how those fees are communicated.

**Ms Wynne:** And you're saying you want to retain control of those.

**Dr Erlick:** We believe that as a self-regulated profession, our college should continue to have the authority in matters of fees that are not set or determined by government.

**Ms Wynne:** OK. So we will get the details of that.

**The Vice-Chair:** Thank you very much for your presentation.



**ONTARIO COLLEGE  
OF SOCIAL WORKERS  
AND SOCIAL SERVICE WORKERS**

**The Vice-Chair:** The next group is the Ontario College of Social Workers and Social Service Workers.

**Ms Mary Ciotti:** Good afternoon. My name is Mary Ciotti. I'm vice-president of the Ontario College of Social Workers and Social Service Workers. I'm a registered social worker and I work at the Hamilton Health Sciences Centre.

I wish to begin by introducing my colleagues. Glenda McDonald is the chief registrar and executive officer of the college, and Debbie Tarshis is legal counsel for the college.

The college is very pleased to present to the standing committee on Bill 31, the Health Information Protection Act. The college has been involved in several consultations regarding legislation of this nature, including in 2001 in response to the Personal Health Information Privacy Act, 2000, Bill 159, and in 2002 in response to the consultation draft Privacy of Personal Information Act, 2002, circulated by the Ministry of Consumer and Business Services.

The format of our presentation is as follows: I will give a brief overview of the college and its mandate. Ms McDonald will then provide the members of the committee with some information regarding the role of social workers and social service workers, and then proceed to provide a summary of our submission to the committee. We will allow some time to answer questions from committee members and may call upon Ms Tarshis to assist in this regard.

The Ontario College of Social Workers and Social Service Workers, "the college," is the regulatory body for social workers and social service workers in Ontario. Our mandate is to serve and protect the public interest through self-regulation of the professions of social work and social service work. The college was established by the Social Work and Social Service Work Act, 1998. All of the provisions of the act were brought into force by August 15, 2000. Although the college is still in the early stage of its development, in just over three years it has registered approximately 10,000 members in the social work and social service work professions.

The framework of self-regulation established under the Social Work and Social Service Work Act is similar to the framework of self-regulation provided under the Regulated Health Professions Act and health professions procedural code, which govern the 21 regulated health professions colleges, some of whom will be presenting to this committee regarding Bill 31.

1530

Similar to our RHPA colleagues, under the Social Work and Social Service Work Act there is a registration process for determining whether an applicant meets the qualifications for membership in the college in accordance with the requirements of the act and regulations made under the act. There is a process for complaints and

mandatory reports to be filed with the college. There is a complaints committee whose responsibility it is to consider and investigate complaints regarding the conduct or actions of members of the college. Matters may be referred to the discipline committee for a hearing to determine any allegation of professional misconduct or incompetence on the part of a member of the college. Matters may be referred to the fitness-to-practise committee for a hearing to determine any allegation of incapacity on the part of a member of the college. The code of ethics and standards of practice for members of the college, prescribed by bylaw in accordance with the act, provide professional standards and ethical standards to which members of the college must adhere. There is a public register providing information to the public about the members, their professional status, any terms, conditions and limitations imposed on a certificate of registration, any notations of revocation, cancellation or suspension of a member's certificate of registration, and information directed to be added to the register by committees of the college, such as the results of discipline or fitness-to-practise proceedings.

This thumbnail sketch of the role of the college is intended to provide members of the committee with a context within which to appreciate how the college collects, uses and discloses personal health information for the purposes of regulation of the two professions.

I will now turn the remainder of the presentation over to the registrar of the college, Glenda McDonald.

**Ms Glenda McDonald:** Good afternoon. As I begin, I just want to say that I will refer to the Personal Health Information Protection Act by its acronym, PHIPA.

Not only is it important for members of the committee to understand the role of the college; it's also important to understand the role of the professionals that the college governs and regulates in the public interest: social workers and social service workers.

Both professions are employed in a broad range of settings in which health care and social services are delivered. Though some are employed as administrators and educators, many provide direct health care within the definition proposed in PHIPA, as well as social services to individuals, families, groups and communities. Social workers and social service workers who are members of the college and provide health care are health care practitioners within the definition of that term under PHIPA. Many social workers and social service workers are employed by health information custodians, and many are self-employed in private practice. Social workers may be evaluators within the meaning of the Health Care Consent Act or assessors within the meaning of the Substitute Decisions Act. Additionally, many social workers and social service workers who provide health care are employed by organizations that would not be considered health information custodians within the meaning of PHIPA, such as school boards, shelters, correctional facilities, children's aid societies, family service associations, income support programs and employee assistance programs.



The scope of practice of the profession of social work means the assessment, diagnosis, treatment and evaluation of individual, interpersonal and societal problems. This is accomplished through the use of social work knowledge, skills, interventions and strategies to assist individuals, dyads, families, groups, organizations and communities to achieve optimum psychosocial and social functioning.

The scope of practice of the profession of social service work means the assessment, treatment and evaluation of individual, interpersonal and societal problems. This is accomplished through the use of social service work knowledge, skills, interventions and strategies to assist individuals, dyads, families, groups, organizations and communities to achieve optimum social functioning.

In health care, social workers help and empower clients and patients and their families to deal with emotional needs and problems that may accompany or predate illness and disability. This function involves counselling of clients and patients and their families to address emotional needs and problems associated with a health condition and, in appropriate cases, involves psychotherapy.

Social service workers work with a wide range of clients and, in doing so, develop appropriate action plans through the use of assessment, evaluation and referral skills. Social service workers intervene in crisis situations and, depending on specific job requirements, may provide counselling to individuals, families or groups regarding emotional problems.

In the course of their practice, a frequent function of social workers and social service workers is to collect, use, and on occasion disclose personal health information regarding their clients.

The college's collection, use and disclosure of personal health information is done in accordance with and as permitted by the SWSSW act, the regulations made under the act and its bylaws. Pursuant to its objects and its public protection mandate under the act, regulations and bylaws, the college currently collects, uses, and in some circumstances discloses personal health information about a member without the consent of the member. Given that many social workers and social service workers are involved in providing health care to clients, many of the activities of the college which relate to investigating and assessing the practice of a member of the college will involve personal health information of a client of such member. Under many circumstances, the college collects and uses personal health information with the client's consent. Under certain circumstances, the college collects and uses personal health information without the client's consent; however, it's necessary to do so to protect the public from harm caused by a member's incompetence, incapacity or professional misconduct. In other words, the purpose for which the college obtains personal health information about a client or a member is to investigate, assess and, where necessary, impose sanctions on a member in order to protect the public from harm.

It's important to understand that subsection 50(1) of the Social Work and Social Service Work Act imposes a duty of confidentiality on every person engaged in the administration of the act with respect to all information that comes to his or her knowledge in the course of his or her duties and not to communicate any of those matters to any other person, subject to limited exceptions. A breach of this provision is an offence under the act.

I will now turn my comments to a summary of the college's written submission to the committee regarding PHIPA.

The college appreciates the challenges of creating consistent and comprehensive rules for organizations that collect personal health information. Through this submission, the college wishes to assist the government in understanding the ways in which the protection of an individual's privacy and facilitating the effective provision of health care intersect from the point of view of the college. The college has reviewed the legislation principally from the perspective of the impact of the legislation on the role of the college to protect the public. The college firmly believes that facilitating the effective provision of health care includes ensuring for the public of Ontario that social workers and social service workers who provide health care are qualified and practise in accordance with professional standards protecting the public from practitioners who breach professional standards or who are incompetent or unfit to practise.

The college supports the government's initiative to provide clear rules for the collection, use and disclosure of personal information in the health sector, based on the principles enunciated by the Canadian Standards Association model code for the protection of personal information.

The college is pleased that a number of provisions of PHIPA recognize and are consistent with the role of the college to regulate its members in the public interest. Specifically, the college is pleased that the college has not been included in the definition of "health information custodian," and that specific provisions permit health information custodians to disclose personal health information without consent to the college for the regulatory purposes of the college. This information is essential so that the college can protect the public from harm.

The college supports the recognition under subsection 47(1), "Restrictions on recipients," that legislation such as the Social Work and Social Service Work Act may permit or require uses and disclosures that are different from the purpose for which the health information custodian disclosed information to the college.

As the college has stated, it is supportive of the intent of PHIPA, as well as much of the drafting of the new legislation. However, the college does have some concerns with certain sections of PHIPA.

The first of these is the paramountcy provision in PHIPA. PHIPA provides that it is paramount to any other legislation in the event of a conflict. There are several potential conflicts and inconsistencies between the PHIPA and the Social Work and Social Service Work



Act. In the written submission, we provide some examples of provisions that may create a conflict between PHIPA and the Social Work and Social Service Work Act or where PHIPA and the Social Work and Social Service Work Act are inconsistent. The college is concerned that the potential conflicts and inconsistencies between PHIPA and the Social Work and Social Service Work Act will create confusion and unintended consequences regarding the college's regulatory role and will involve the college in proceedings before the courts while inconsistent and conflicting provisions await judicial interpretation. This would have a negative impact on the protection of the public from harm.

The college recommends that in order to avoid conflict and inconsistency between PHIPA and the Social Work and Social Service Work Act, a complementary amendment be made to the Social Work and Social Service Work Act to the effect that in the event of a conflict between a provision of PHIPA or its regulations and a provision of the Social Work and Social Service Work Act or its regulations, the provision of the Social Work and Social Service Work Act or its regulations prevail.

1540

As stated previously, the regulatory role of the college and the legislation governing this college is similar to the regulatory role of the health regulatory colleges and the legislation governing those colleges. We encourage the standing committee, when it is considering changes to be made to PHIPA relative to the health regulatory colleges, to recognize the similarities between this college and the health regulatory colleges and determine if any changes that may be contemplated relative to the health regulatory colleges are also applicable to this college.

In the written submission of the college, the college has made suggestions regarding the drafting of subsections 47(1) and (2) and clause 33(3)(c) of PHIPA. The drafting changes to section 47 are recommended to recognize the potential use and disclosure of personal health information received by the college in the course of its legislated duties. The college has a continuum of uses that it makes of personal health information in a manner that is either permitted or required by the Social Work and Social Service Work Act.

Subsection 47(2), however, does not recognize any exception to the obligation regarding the extent of use or disclosure of personal health information where an exception would be permitted or required by another act of Ontario.

If a health information custodian makes a mandatory report regarding a member that includes personal health information, then the college may conduct an investigation. This investigation may ultimately result in a referral of allegations of professional misconduct to the discipline committee of the college for a discipline proceeding. The member of the college who is the subject of a discipline proceeding could argue, based on subsection 47(2), that the full record of a college's investigation should not be provided to the prosecutor for the college to prepare for a discipline proceeding because not all of the personal health information contained in the record of the col-

lege's investigation was reasonably necessary for the purpose of the discipline proceeding. While these arguments on the part of a member may not ultimately be successful, the processes of the college may become embroiled in proceedings before the courts while provisions inconsistent with the Social Work and Social Service Work Act await judicial interpretation.

In addition, it is possible for the college to receive personal health information from a health information custodian that it would be required by law to disclose, such as in an order to comply with the common law duty to warn a person or persons if there is a significant risk of serious bodily harm to that person or persons. The current drafting of subsection 47(1) would not permit the college to do so.

The college wishes to recommend a change to the drafting of clause (c) of subsection 33(3) of PHIPA. This subsection appropriately recognizes the exception for the regulatory health colleges to the prohibition of the collection and use of another person's health number by a person who is not a health information custodian. This college will need to rely on this exception in the same way that the health colleges will. The college believes that this is just an oversight in the drafting and accordingly the language of the exception in clause (c) should be amended to include this college.

A number of the members of the college provide health care but are employed by agencies that are not health information custodians. There is a potential for a conflict between such a member's duties under PHIPA and the expectations of his or her employer to comply with the policies and practices of the employer. We suggest that consideration be given to adding protection for such an employee from retaliatory action by his or her employer when the employee is acting in accordance with his or her duties under PHIPA.

In conclusion, the Ontario College of Social Workers and Social Service Workers supports the Personal Health Information Protection Act and is encouraged to see a number of the provisions of PHIPA support the college's regulatory role and processes.

As stated, the main concern of the college is that the paramouncy provision of PHIPA may have unintended consequences that would impede the college in its legislated mandate to regulate its members for the protection of the public. The college recommends that, in order to avoid these unintended consequences, the Social Work and Social Service Work Act prevail in the event of a conflict between PHIPA and the Social Work and Social Service Work Act. The college would be pleased to assist in the implementation of any of these recommendations.

Thank you for the opportunity to make this submission to the standing committee and for your consideration of the college's concerns and recommendations.

**The Vice-Chair:** Thank you very much.

**Ms Martel:** Thank you for your presentation.

**The Vice-Chair:** You have a minute left, so if you could—

**Ms Martel:** Very quickly, then, because you're talking about how the social work act should prevail. In one



of the areas that I see, if that happened, someone would not then be able to go to court to ask for an award for damages because that would be counter to section 49 of the social work act. Am I reading that correctly?

**Ms Debbie Tarshis:** Unless there was bad faith. One can sue any member of the college or its counsel if their action is done in bad faith. So the provision of section 49 does not exclude actions that have been taken in bad faith.

**Ms Martel:** But how does that square, then, with the provision under section 63 that says that if the commissioner has made an order, which I would assume would be that some wrongdoing has been found, which would lead to the privacy commissioner then determining someone could go forward with an action—you not see a conflict there, then, that someone who would have a right under section 63 would lose that right if section 49 of the social work act actually prevailed?

**Ms Tarshis:** The Supreme Court of Canada has recognized the importance of immunity provisions given with respect to the members of counsel and committees of the college in carrying out their roles under their legislative framework because of the importance of supporting the regulatory role of these bodies. So consistent with the legislation that exists, the college would wish to see the immunity provision follow through with respect to all of its regulatory functions.

**The Vice-Chair:** Thank you very much for your presentation.

#### ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO

**The Vice-Chair:** The next group is the Royal College of Dental Surgeons of Ontario.

**Mr Irwin Fefergrad:** Good afternoon. It's been a long afternoon and day for you, I suspect. I understand why there are no windows in this room. You can't see what's going on outside.

With the permission of Mr Dhillon, may I provide each of the parties one of these kits? I undertake to provide each and every member a kit tomorrow. May I do that? Thank you very much.

The kit is a compliance kit that we prepared for each and every dentist in the province of Ontario to be fully compliant come January 1 with the federal legislation. I give it to you just to show you that it's not difficult for an entire profession to be compliant with privacy. In particular, the Royal College of Dental Surgeons of Ontario has a strong belief and commitment to privacy, as evidenced by what we did with the federal legislation.

Our college, as you've heard from other colleges, is not a university. We're not a teaching institution. We're a regulator and, in the case of dentistry, we regulate 8,000 dentists in the province of Ontario. You've given us this authority to do so under the Regulated Health Professions Act and we've been doing this for some 135 years, give or take.

We're governed by the Regulated Health Professions Act, which, as you know and have heard before, came into being in 1993. But it took about 10 years to develop in its concept, and it became a model of governance for regulatory bodies in not only North America but in the world. In fact, it's looked at today as a model piece of legislation. In fact, we now know it works very, very well.

#### 1550

Our core responsibilities are, first, registration, basically entry: Do we license people, register them, in order to carry on the onerous responsibilities that you've allowed us to have?

Our second core responsibility involves the area around professional misconduct: complaints, where the public, of course, has access to our process, and discipline, where our committees have the authority to remove licensure or the permission to practise dentistry in the province of Ontario. In fact, the only body, of course, that can remove the ability to practice is the regulator. In our case it's our college.

Our third core area of business is the quality assurance business. We want to make sure that not only are we there for the discipline end but we're also there for the education and rehabilitative end for our members who in fact are licensed.

The RHPA provides a broad mandate for us, as you know. It allows us not only to increase the knowledge base of our members, to educate our members and to provide ethical codes for our members, but you also have provided us with the authority to set standards of practice for our members and to do anything that relates to health care in the broadest sense that will benefit and protect the public. We don't represent the membership; we represent the public. That's what you've delegated that responsibility to us to do.

We've been very active, as you know, as other colleges have, with the previous drafts of legislation that came with respect to privacy. We're delighted to see that much of the submissions that we've made historically are in this current legislation. The college supports this legislation, as it supports the notion and concept of privacy generally. It's something we've invested huge resources into, as I said before, not only with the PIPEDA legislation, but as we will with this one as well when it comes into being.

We're delighted that this information has incorporated many of our previous concerns and we're very pleased, for the most part, with it. That said, it's not a perfect piece of legislation, because nothing in life is perfect and ideal, but we thought we'd make a submission or two that might help make it just a little bit closer to perfection than it now is.

My colleagues have talked to you a bit about the notion of paramountcy, the notion of what piece of legislation should really, in the sense of a conflict, govern. When you have two competing pieces of legislation, it's important to look at what the consequences are if one piece is paramount over another: what will happen in



terms of, in our case, public interest protection. I thought I'd give you two examples. I know that Ms Wynne had asked a colleague of mine earlier for some examples, which you were given, and I thought I'd scoop the opportunity and, having had some time to think about it, add a few to the trough for your consideration.

Subsection 11(2) of HIPA suggests that the test for record-keeping is reasonableness. Every college has a much higher standard; every college under the RHPA requires not reasonableness but accuracy. Accuracy is the test. The reason is that when a patient's health is at stake, it's important that the health care provider make sure that the record is as perfect as it can be so that if a subsequent health treating practitioner takes a look at that record, he or she can see what the treatment was before, what radiographs were ordered, what medicines were prescribed, what the medical history has been like, so that there is little opportunity of an error being made, with the patient's health being at stake, because of a conflict in the records.

So let's track this out and see what happens. As you know from our brief, one of the professional misconduct regulations is essentially that of a dentist who may not keep accurate records. Reasonableness is not good enough for us; accuracy is what's important. If that record isn't accurate, that member may find himself or herself the subject of a complaint and the subject of some concern by the college.

In a discipline hearing, it may well be that you have inadvertently provided a defence that might not otherwise be available. The defence would be this: "Look, college. You're imposing on us a standard of accuracy. However, HIPA is imposing on us a standard of reasonableness. The RHPA isn't paramount, and therefore HIPA is paramount. Therefore, the standard of accuracy that you're requiring has to fall by the wayside." Some of you may say that's an argument that, at the end of the day, because the discipline committee may or may not buy it, a court is going to have to decide is not going to hold much water.

The difficulty is that, assuming the discipline committee throws out that kind of argument and says, "Look, we understand what this is all about. We're talking here about patient safety, patient health. Accuracy is the name of the game," and they find the member guilty of professional misconduct, the member appeals and the appeal suspends the order of the discipline committee, so the member is able to continue to practise, able to continue to keep records that aren't accurate and that put his patients in jeopardy. It affords a defence. It costs a lot of money to defend these kinds of actions; it costs a lot of money to go to court. In fact, the government may be brought in with intervener status to be able to offer some argument and help to the court as to which legislation is paramount. At the end of the day, it's an unnecessary defence that nobody intends a member who's not abiding by college regulations to have.

That's just one example. We can use that same example in the area of fraud. Suppose the record is inaccurate, lacks detail, and the college has a complaint from an insurance company and says, "We suspect that

the member is backdating service to cover off insurance," or "We suspect there is a wrong fee code being inserted in order to cover off one service that is covered, as opposed to the service that was actually rendered, which is not covered." Very often, by the way, in these cases—and 135 years of business tells us this—the patient is in collusion because the patient benefits. So we don't get a lot of co-operation from the patients on this.

Fraud is a very serious matter. It's something we take absolutely very seriously. We entrust our members not only with the health of patients but as well with honesty to deal with other stakeholders like insurance companies that have huge investments financially in health care and in providing insurance.

Spurious though it may be—but it is a defence—the member's defence would be, "Oh, gee whiz, the record isn't quite accurate. HIPA allows me to make some corrections to it. Let me make those corrections and therefore make it whole." In the meantime, a defence that wasn't intended would be offered and, again tracking it through, even if the discipline committee orders that the member has been found guilty of professional misconduct, the member would appeal. There's about another year and a half of wait until it goes to divisional court and another year and a half of this practice continuing.

One last example that I can think of, and I think I'll stop with that, is that under the RHPA you have mandated that in two specific sets of circumstances there must be mandatory reporting, one with respect to sexual abuse and another with respect to dismissal of a member. The requirement is that the college be notified in writing under those two sets of circumstances. That's fine, and we often get our information around boundary issues from this mandatory reporting section. If it's in a public health context or a hospital context, our best information on boundary issues actually comes from the mandatory reporting section.

The difficulty is that, again, it's a defence. It may not succeed at the end of the day, but why go through the headache? HIPA provides for the provision that essentially we're not allowed to use the information other than for the purposes for which it was intended. So the defence the member would have is that the report came to us because that's the mandatory requirement under the RHPA; the employer or the hospital reported to us because they have to. Nowhere does it say in the RHPA that we then track that to discipline. That becomes a registrar's discretion, whether or not we want to proceed to an investigation, and of course it all depends on the detail. But if we were to proceed—in my case if I were to proceed to an investigation, I will likely be faced with an argument that I'm abusing my authority, because HIPA says that the mandatory reporting is for the purposes only of mandatory reporting. I'm not allowed to use that information, the argument would be, to pursue professional misconduct.

1600

I leave you with those three troublesome examples, and there are more. You will hear from my colleagues as



you've heard from those before me that paramountcy is the one really troublesome issue in this legislation. We were fortunate enough to meet with the privacy commissioner's office the other day, and I know you will be hearing from the privacy commissioner herself tomorrow. Time permitting, if there is an exploration of the paramountcy argument, I think you will find that the privacy commissioner's office would join the colleges in our concern that when there is a conflict, the RHPA should really be paramount. I don't want to take up valuable time now, but there's lots of room in the legislation to tweak it just a little bit to make sure there is that continued public interest protection.

In conclusion, the college commends the government for coming through with this legislation. We take the government at its word that we will be involved in the consultation process with the regulations. Therefore we're not troubled with the authority and power under the regulations, knowing full well that we will be fully involved and fully consulted, using our years of experience to assist you in developing what will be as close to perfection as we can get in the regulatory process.

I'm happy to take any questions.

**The Vice-Chair:** We have a little less than two minutes each.

**Ms Wynne:** I just want to check out the paramountcy issue. There are a couple of sections or subsections in the bill, and I assume the answer is that they're not adequate, but I would like you to comment on them.

Under subsections 42(1), clauses (g) and (h), (h) says, "Subject to the requirements and restrictions, if any, that are prescribed, if permitted or required by or under any other act or an act of Canada or a treaty...." In other words, the disclosure of personal health information would be controlled by another act if it came into conflict with this one.

**Mr Fefergrad:** I liked your first comment: It's not good enough.

**Ms Wynne:** Based on what you said, I assumed it wasn't, but can you explain why it's not?

**Mr Fefergrad:** Whenever there is an issue that isn't clear, it raises defences that are not otherwise available. Unfortunately, the way the statute is worded, there are other statutes that are given paramountcy to HIPA; the RHPA is not.

**Ms Wynne:** The ones that are listed?

**Mr Fefergrad:** The ones that are listed, right. That will provide an argument. You see, the difficulty is that when government and people work on drafting of legislation, you're doing it with the best of intentions, to try to offer the best protection that's available to the public. When it gets in the hands of defence lawyers, sometimes they try to maybe give it intention interpretation that you didn't intend. All I'm suggesting is that if it's your intention that in areas of conflict the RHPA be paramount, it's safer to say so.

**Ms Dayna Simon:** Maybe I can add my clarification to that too. The section that you're referencing speaks to disclosure, and the section with the mandatory reports,

where we have the problem, is subsection 47(2), which is a use.

**Ms Wynne:** Actually, I thought that was going to be your answer.

**Mr Fefergrad:** Well, I knew she would say that, so I didn't want to say it.

**Ms Wynne:** I was waiting for it. Thank you.

**Mr Yakabuski:** Thank you very much for joining us today. You've cited the same concern as two other colleges that were here previously this afternoon. It's with regard to paramountcy, whose legislation takes precedence in cases of conflict. You've spoken to a few examples. In the absence of bringing in a provision so that your act would take precedence, are there amendments you could recommend to the specific clauses you have concerns with that would bring them more in line or in compliance with your own acts so that we could avoid those conflicts without necessarily giving your act paramountcy over this act?

**Mr Fefergrad:** Actually, I like to say the RHPA is our act. We're all in it together. We don't own it; it's a teamwork effort.

I suppose you could look at subsection 7(2). It specifically says, in schedule A, "In the event of a conflict between a provision of this act or its regulations and a provision of any other act or its regulations, this act and its regulations prevail unless this act, its regulations or the other act specifically provide otherwise." So you could actually put a complementary provision in the RHPA, as others have submitted to you, or you could add a clause (f) in section 9. You've got some exceptions in section 9. You go from (a) to (e); you could add an (f) and say, "In the event of a conflict, the RHPA shall have precedence."

**Ms Martel:** Thank you for being here today. Actually, I wanted to focus on schedule B and your desire to see your quality assurance programs elevated to a level that I think would be on a par with, say, information that comes forward in a quality-of-care committee. The proposal you brought forward is either to do it by regulation, which I could see would work if we added perhaps a number 4 that would speak to the regulated colleges, because I'm going to assume that everybody else has them and would like that protection, or a consequential amendment to the Regulated Health Professions Act. I think it's the second one that I didn't understand in terms of how that, then, would deal with your specific concern that those discussions remain confidential.

**Ms Simon:** I think definitely the first thing we proposed would be preferable. With the amendments to the RHPA, we would look for the exact same language as you see in schedule B put into the RHPA for our quality assurance committee information.

**Ms Martel:** When you're talking about the same language, are you referencing the definition around "quality of care committee"?

**Ms Simon:** The same protections about use, compelling testimony. I think the real solution would be either to do it by regulation or to change it right in



schedule B so that the health care colleges are actually listed.

**Ms Martel:** So you could do that under the definition of “quality of care committee”—

**Ms Simon:** Or by regulation.

**Ms Martel:** —“that is established, appointed or approved, (i) by a health facility” or point number 2 or however you want to do it, by the college of a regulated health profession?

**Ms Simon:** Yes.

**The Vice-Chair:** Thank you for your presentation.

## COLLEGE OF MEDICAL LABORATORY TECHNOLOGISTS OF ONTARIO

**The Vice-Chair:** Next, we have the College of Medical Laboratory Technologists of Ontario.

**Ms Kathy Wilkie:** Good afternoon, everyone. Thank you very much for the opportunity to address the committee. My name is Kathy Wilkie. I’m the registrar and executive director of the College of Medical Laboratory Technologists of Ontario, and I have with me legal counsel Christina Langlois, who is our director of investigations and hearings.

This afternoon I’d like to first tell you a little bit about the college and then turn it over to Christina, who will speak more specifically about the issues or the concerns we have with respect to HIPA.

The CMLTO is the regulatory body for almost 8,000 medical laboratory technologists in Ontario. The government established us as a regulatory college in 1993, with a mandate to protect the public interest by regulating the practice of medical laboratory technology.

Our mission is to protect the public’s right to quality laboratory service by ensuring that all members meet and comply with the accepted standards of practice within a self-regulated environment.

1610

Our vision is to be recognized and respected for our leadership, collaboration and quality services by our members, the public, members of the health care team, government and other stakeholders.

Our values include professionalism, fairness, integrity, accountability and collaboration.

Many of you may not be familiar with what we do. We are considered somewhat of an invisible profession because we are behind the scenes working very diligently to provide essential information to other health care providers. The practice of medical laboratory technology is the performance of laboratory investigations on the human body or on specimens taken from the human body and the evaluation of that technical sufficiency.

It might be interesting to note that 70% of a person’s medical file is comprised of medical laboratory test results. Over 70% of the medical decisions that are made and the treatment plans developed are based on those test results. The CMLTO works together with the laboratory services branch of the Ministry of Health and Long-Term Care and the quality management program-laboratory services to help set and monitor best practice standards.

One of our statutory objectives under the Regulated Health Professions Act is to develop, establish and maintain standards of qualification for persons to be issued certificates of registration in the province. We are also responsible to develop, establish and maintain programs and standards of practice to assure the quality of practice of the profession and to maintain standards of knowledge and skill and programs to promote continuing competence among our members.

Our core business includes setting entry-to-practice standards. We do ensure that members who practise medical laboratory technology in the province are only granted that right providing they have met the minimum set of criteria and have the essential competencies necessary to practise safely and protect the public from harm.

As you’ve probably heard from other colleges today, we also are responsible for complaints and discipline processes. We enforce the standards of practice and protect the public from incompetent practice through our complaints and discipline processes. These, combined with our investigatory powers set out in the RHPA, allow the college to deal effectively with complaints and reports or information related to professional misconduct, abuse, fraud or incompetence.

The free flow of information from health facilities, patients and health professionals regarding these matters is essential to our effectiveness as a regulator. The CMLTO, like other regulatory bodies, does not possess the resources to be in every practitioner’s place of practice at all times. We must therefore rely on the information of others to be able to remove unsafe practitioners from practice.

The next core activity is incapacity and fitness to practise. The CMLTO also deals with practitioners who have physical or mental conditions that impair their ability to practise. Unfortunately, at times these practitioners must have their practices restricted, or in some cases be removed from practice entirely, to ensure the public safety. Again, it is essential for public protection that we are permitted unfettered access to the information that makes these processes work.

We’ve talked about quality assurance. My colleague who spoke before talked about the issues around quality assurance. The core of any self-regulating profession is a commitment to continuing competence. The RHPA creates a positive obligation on health regulatory colleges to have quality assurance programs to ensure that continuing competence is maintained by members. We have a multifaceted quality assurance program that includes practice reviews, technical competence evaluations, and a professional portfolio that must be maintained by every medical laboratory technologist and must be submitted to us upon request. This program allows medical laboratory technologists to evaluate their practice against objective standards, diagnose learning needs, and identify opportunities to improve their practice. Clearly a program of this kind relies on the absolute protection of the information to foster honesty and full disclosure. The benefits



of a quality assurance program are well documented. CMLTO's program has been reviewed and evaluated by an independent body and found to fully comply with the high standards set out in the RHPA.

That's a little bit of background on our regulatory college and profession. At this time, I'd like to give Christina Langlois the opportunity to speak specifically to some of our college's concerns with respect to Bill 31.

**Ms Christina Langlois:** Thank you, Kathy. Ladies and gentlemen, I know the afternoon is getting long and it's miserable weather out there, so I won't repeat what you've already heard from other regulatory bodies. Our submissions on Bill 31, though, won't surprise you. Having heard from other regulatory bodies, I think it's safe to say that our support is in the same areas and our concerns are also in the same areas.

Firstly, the CMLTO is very supportive of specific privacy legislation that deals with the health care sector. We feel that it's appropriate and in fact needed that health care information be dealt with uniquely and separately from commercial information, so we very much welcome a specific piece of legislation geared to our unique needs.

We have been involved, as have our colleagues in other regulated colleges, in consultations on previous versions of provincial privacy legislation, and I think it's safe to say that we are very pleased with this iteration of the privacy legislation. It speaks to many of the concerns that we had raised in prior consultations. So I can tell you that the CMLTO certainly supports the spirit and intent of HIPA 2003, which is what we like to call it around our shop.

We do have some areas that we'd like to comment on specifically. Firstly, we're very encouraged to see that this legislation does not refer to colleges as health information custodians. In fact, quite clearly it does not lock us into that definition. In our submissions on previous versions of this privacy legislation we made clear how difficult being classified as a health information custodian would have made our regulatory activities. We're certainly grateful that we have not been so classified and would recommend that we remain in a non-custodial status, as we are now.

In terms of the disclosure provisions, I think we can say that we're very pleased at the efforts that have been made by the drafters to reflect college regulatory functions in the disclosure provisions of HIPA 2003. Clearly, you've recognized the need for health information custodians to disclose information to colleges for public protection and regulatory purposes. That's very important to us and we feel that has to be preserved.

We want to reassure you that as colleges under the RHPA, we are in fact subject to very strict confidentiality provisions in the RHPA, and the information that comes into our hands is dealt with appropriately from that perspective and always has been. In addition, the RHPA contains a number of other provisions that can be used to protect sensitive patient information or in fact the identification of patients who may appear at hearings. For

instance, discipline hearings can be ordered closed and publication bans can be ordered to protect an individual's identity or their medical information.

We're very pleased also to see that there's a minimum consultation period included in the legislation for any proposed regulations. Unfortunately, the submission we make to you today has not had the benefit of input from our counsel because of the very quick turnaround time on this bill. We certainly would be happier if we were here with their input, because we think they bring a great deal to the table, both from representing the public of Ontario and our profession. So we're pleased to see that we'll have a minimum period in which to make those submissions in the future on proposed regulations.

We do have a number of concerns—not a number; let's say two. That makes it sound more manageable. Again, they are the same concerns as have been expressed by other regulators.

The first is the issue of paramountcy. I think the CMLTO is quite pleased with the intent of the legislation and feels quite confident that the intent of the legislation was to protect privacy, but in a way that doesn't interfere with colleges' important regulatory functions.

Having said that, as my colleague Mr Fefergrad mentioned, the creativity of defence counsel is sometimes endless. So in any area where there is a lack of clarity, colleges potentially face defences from members and their counsel that HIPA was in fact intended to provide them with a shield from the college's powers to inquire into their practices or into their records, or frankly, it might be argued that it blocks the college from using information that comes to their attention. We at the CMLTO do not believe that was the intent of HIPA 2003, but we are concerned that these are the types of arguments we may face if some clarity is not brought into the legislation.

The example that I provide in my submission is not going to shock you either. It's the example of an incapacitated professional being reported to the college by their employer—in this case, a hospital. We've assumed in our example that the MLT, or medical laboratory technologist, in question has been let go because they have a cocaine addiction.

1620

Clearly, the hospital has filed the report with the college to fulfill their mandatory reporting obligations, and in fact if they were asked, they would say just that. The report is usually drafted by their legal and HR departments to very much comply with the four corners of their mandatory reporting obligation.

Clearly, the college does not simply stop after receiving that information. I think the public would be dismayed to think that any college would receive that kind of information and not take further steps. The college uses that mandatory report, if you will, to trigger other processes that are put in place to appropriately deal with the matter. In this case it could well be an incapacity proceeding or a fitness-to-practise proceeding. It could even be a professional misconduct proceeding if the



professional had been practising while under the influence of narcotics. So there is certainly a variety of different processes that the college may choose to access when they come by information about a practitioner.

It's our position that certainly we don't believe HIPA was intended to restrict those options or the college's ability to access those options. We feel that those options are very important for the protection of the public. Our concern is really that: Not that we think HIPA was ever intended to undermine our abilities or our effectiveness, our functions, our programs, but rather, by a lack of clarity in drafting, that there is a possibility that HIPA may provide unscrupulous members with a defence that, even if it's found to be ineffective in the long run, could delay the process as much as two years while the individual continues to practise. This is the unfortunate situation that we do not want to see happen as a result of what we feel is very good legislation to protect the privacy of patient health information.

We suggest to you a remedy that you've also heard before. The easiest solution would be, in those cases where the RHPA and HIPA 2003 conflict—and there are only limited situations where that might happen—to have the RHPA prevail.

The other example I provide in our submission is the example I believe you've already heard as well about the ability of investigators and assessors of the college to access confidential health information. Our legislation provides them that ability despite any confidentiality of health information in other legislation. We're concerned that someone might mount the defence that HIPA 2003 was actually meant to erode those powers and that we don't have the ability to access this information. From a regulator's perspective, the health information of our members and of their patients is often the best evidence we have to deal with incompetent practice and with individuals who should be removed from practice, so we very much are concerned about anything that might restrict our access to that information.

Our second concern, and I think again you've probably heard this before, is that we are very encouraged to see a very high level of protection given to quality-of-care programs in schedule B to HIPA 2003. We would like to request that college programs be so recognized as well and be provided with the same protections. The college programs are statutory, they run across the profession, they're inclusive, and we believe that makes them potentially very valuable and that they certainly deserve the same protections that quality-of-care programs have been granted under schedule B.

Having said all of that, in conclusion I can say that our college certainly supports HIPA 2003. We're pleased that there's a unique set of rules for health care but college functions are recognized in that set of rules. Our only concerns are unintended consequences that might emerge when the legislations come into conflict and also the request that our quality assurance programs be included in schedule B.

Thank you very much for your time and attention this afternoon.

**The Vice-Chair:** Thank you. We'll start with the official opposition; a couple of minutes each.

**Mr Yakabuski:** Thank you for coming in. We're not going to take too long either, because it seems to be an ongoing concern cited by, I guess, four regulatory bodies now. The committee has certainly duly noted that that's a concern you share.

**Ms Martel:** I'm going to ask you something that wasn't in your brief. It relates back to this issue of which act is going to be paramount.

The College of Social Workers has its own act, of course, which is different from the rest of the regulated professions.

**Ms Langlois:** That's right. They're not covered by the RHPA. I'm afraid I'm not terribly familiar with their legislation.

**Ms Martel:** No, no, I'm not going to ask that, because what's in their brief, which they didn't focus on, was of course that there is a section that essentially protects people from immunity.

Do you have, through the Regulated Health Professions Act—are there sections that are essentially the same?

**Ms Langlois:** There are. They extend to individuals who serve on council and committees, and the immunity is for activities undertaken in their role as a council or committee member, or staff member as well, so if you have a staff investigator—it's been argued that those individuals are covered as well. People have challenged that but I think, as my colleague Ms Tarshis has pointed out, the courts have been fairly supportive of the immunity provision.

**Ms Martel:** I don't pretend to be a lawyer, because I'm not. I want to be clear about something. The bill of course has a new section essentially that would allow for damages for breach of privacy. It was clear from the case by the social workers that if we allowed all of the details of their bill to be paramount, then I think—and I could be wrong, and I'm not trying to undermine what they say—this right, which is now in the law, would not be in place then for people trying to deal with their college. It's not clear to me whether, given what you just said, the same thing would happen if the committee made the argument that all of the details and implications of the Regulated Health Professions Act also applied. Is that going to then wipe out section 63 of this bill?

**Ms Langlois:** I wouldn't think so, not having studied it in detail, but my gut tells me not, simply because the immunity provisions were meant to be protective of people who were carrying out a legislative or statutory role or function under the act. I think that breaching privacy would certainly not fall within what would be seen as your role, and therefore you would not be protected in that context.

**Ms Martel:** The distinction is around a front-line provider, if I might, versus someone who in your college has a role that's different essentially.



**Ms Langlois:** That's right. Our immunity provision applies more so to those people who do committee and council work at the college but not to the practitioners in their practice. That's not the intent of that immunity. It's for people who do the committee work at the college.

**Ms Wynne:** Thank you for your presentation. Your recommendation around the paramountcy issue is that there be a complementary amendment. Is the suggestion then that there would be paramountcy on certain sections? Is that what you're suggesting? I mean, what would it—

**Ms Langlois:** How could it be structured?

**Ms Wynne:** Yes, how could it be structured?

**Ms Langlois:** There are various options. Certainly you could say that in any conflict the RHPA would prevail. There is the possibility of doing a section-by-section analysis. I think the difficulty at this stage, to be honest, is that no one has had the time to, in a very detailed way, create a comprehensive list of things that we think may conflict. Certainly, that is a possibility as well.

**Ms Wynne:** So as far as you're concerned, it doesn't have to be that blanket statement; it could be section by section and here are the issues where you need paramountcy.

**Ms Langlois:** It would require us to do a very detailed analysis but, absolutely, it's possible to go through and analyze those sections which we feel are most problematic.

**Ms Wynne:** The last question is on the timeline for implementation. Can you comment on that, the way it's written in the bill? Is the timeline too short or are you eager that we get going on this? Which is the—

**Ms Langlois:** We, like other colleges, have been involved with our federation, which is the group that represents all 21 RHPA colleges, whom I think you'll hear from tomorrow, in preparing for the application of PIPEDA to our members anyway and creating guides and checklists. So, no, I don't think that they—

**Ms Wynne:** So you're ready.

**Ms Langlois:** Yes. I think we've got to be ready for something to come, and if this is what it is then, yes, we can be ready.

**Ms Wynne:** Great. Thank you.

**The Vice-Chair:** Thanks to all the presenters and the members for being here today. The committee stands adjourned until 10 am tomorrow.

*The committee adjourned at 1629.*











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# CONTENTS

Monday 26 January 2004

<b>Subcommittee report .....</b>	<b>G-5</b>
<b>Health Information Protection Act, 2003, Bill 31, Mr Smitherman /</b>	
<b>Loi de 2003 sur la protection des renseignements sur la santé,</b>	
<b>projet de loi 31, M. Smitherman .....</b>	<b>G-5</b>
<b>Ministry of Health and Long-Term Care .....</b>	<b>G-6</b>
Hon George Smitherman, Minister of Health and Long-Term Care	
Ms Carol Appathurai, acting director, health information privacy and sciences branch	
Ms Halyna Perun and Mr Michael Orr, legal counsel, legal services branch	
<b>University Health Network .....</b>	<b>G-22</b>
Mr Tom Closson	
Ms Tiffany Jay	
<b>The Anglican, Evangelical Lutheran and Roman Catholic Churches in Ontario.....</b>	<b>G-25</b>
Bishop George Elliott	
Archdeacon Harry Huskins	
Rev Adam Prasuhn	
Mr John Varley	
Bishop John Pazak	
<b>Centre for Addiction and Mental Health.....</b>	<b>G-28</b>
Ms Gail Czukar	
Mr Peter Catford	
<b>Institute for Clinical Evaluative Sciences .....</b>	<b>G-31</b>
Dr Andreas Laupacis	
Ms Pamela Slaughter	
<b>Canadian Mental Health Association, Ontario Division .....</b>	<b>G-35</b>
Ms Patti Bregman	
<b>College of Medical Radiation Technologists of Ontario.....</b>	<b>G-37</b>
Ms Sharon Saberton	
Ms Debbie Tarshis	
<b>Ontario Medical Association.....</b>	<b>G-40</b>
Ms Barb LeBlanc	
Dr Larry Erlick	
<b>Ontario College of Social Workers and Social Service Workers .....</b>	<b>G-44</b>
Ms Mary Ciotti	
Ms Glenda McDonald	
Ms Debbie Tarshis	
<b>Royal College of Dental Surgeons of Ontario.....</b>	<b>G-47</b>
Mr Irwin Fefergrad	
Ms Dayna Simon	
<b>College of Medical Laboratory Technologists of Ontario.....</b>	<b>G- 50</b>
Ms Kathy Wilkie	
Ms Christina Langlois	



G-3

G-3

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# Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

# Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

## Official Report of Debates (Hansard)

Tuesday 27 January 2004

## Journal des débats (Hansard)

Mardi 27 janvier 2004

### Standing committee on general government

Health Information  
Protection Act, 2003

### Comité permanent des affaires gouvernementales

Loi de 2003 sur la protection  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Tuesday 27 January 2004

Mardi 27 janvier 2004

*The committee met at 1000 in room 151.*HEALTH INFORMATION  
PROTECTION ACT, 2003LOI DE 2003 SUR LA PROTECTION  
DES RENSEIGNEMENTS SUR LA SANTÉ

Consideration of Bill 31, An Act to enact and amend various Acts with respect to the protection of health information / Projet de loi 31, Loi édictant et modifiant diverses lois en ce qui a trait à la protection des renseignements sur la santé.

**The Vice-Chair (Mr Vic Dhillon):** Order. Good morning and welcome to the standing committee on general government on Bill 31.

INFORMATION AND PRIVACY  
COMMISSIONER OF ONTARIO

**The Vice-Chair:** The first presenter is the Information and Privacy Commissioner of Ontario. You will have 20 minutes. Any time that is not used will be divided among the three parties for questions. You may start.

**Ms Ann Cavoukian:** Good morning, members of the committee, ladies and gentlemen. I'm very pleased to have this opportunity today to address the committee. Since I have not yet had the pleasure of meeting most of the committee members, I'll just take a moment to introduce myself and my office very briefly. I'm Ann Cavoukian. I'm the Information and Privacy Commissioner. I'm joined here today by my assistant commissioner of privacy, Ken Anderson. My office was created in 1987 to oversee Ontario's public sector access and privacy legislation, the Freedom of Information and Protection of Privacy Act and, three years later, its municipal counterpart, the Municipal Freedom of Information and Protection of Privacy Act. I've been with the office since it was created in 1987 and was appointed Information and Privacy Commissioner in 1997.

Let me start by saying how very pleased I am that the new government has moved forward so quickly with the introduction of this much-needed health information privacy legislation. My office has been advocating the need for health information privacy legislation since its inception in 1987, but we are not alone in this regard. Members of the public, health care providers and other stakeholders have been waiting for the introduction of

this legislation since Justice Horace Krever's report of the royal commission on the confidentiality of health information in 1980. This is 24 years ago—a long time coming.

There have been numerous commendable attempts over the years to get a bill introduced and passed, but for one reason or another they have not been successful. This is largely due to the unique characteristic of personal health information and the enormity of the task of balancing all of the competing interests. On the one hand, you have the need to protect the privacy of individuals with respect to their most sensitive personal information. On the other hand, you have the legitimate needs of the health care sector to collect, use and disclose this information for a wide range of purposes that not only benefit the individual but the public as a whole. Personal health information is not only used to provide health care to the individual but also to help manage and plan our publicly funded health care system, to improve the quality of health care and for medical research purposes—uses that benefit us all.

In my view, this proposed health sector legislation strikes an appropriate balance between these competing interests—no small task, I assure you. I want to acknowledge the efforts of the Ministry of Health and Long-Term Care for listening carefully to stakeholder concerns and developing what I see as a very workable framework.

Let me take a few minutes to highlight some of the improvements in this bill over previous attempts to introduce legislation. All previously proposed legislation has relied heavily on the use of broad regulation-making power to specify operational details. Bill 31 is no different in this respect. However, what is different about this bill is that it incorporates an open and transparent regulation-making process. While the bill includes the ability to alter the established rules through regulations, my office and the public and any other interested parties will now have the opportunity to comment before any regulation is adopted. This is a very significant breakthrough, increasing openness and transparency. I'm very pleased to see this.

Another significant improvement is the establishment of a health data institute to receive and de-identify personal health information that the government needs for analysis of the health care system. The issue is the de-identification of personal health information. That's at



the heart of the problem. Once the identifiers are removed, things are far improved. This, too, is a unique feature in this bill.

You may recall from hearings on previous legislation that there was strong opposition to the government giving itself the authority to direct any health information custodian to submit personal health information that it needed for this purpose. Under Bill 31, these directed disclosures of identifiable data to the government without any oversight by my office are a thing of the past. We are also pleased that Bill 31 will apply to all types of personal health information. There are no carve-outs for certain types of information, such as mental health records, for example.

Another positive feature of the legislation is the use of an implied consent model for the collection, use and disclosure of personal health information for the purpose of providing health care. In my view, this model more accurately reflects the existing status quo, the existing patient-provider interactions, than the previous no-consent model and should not in any way hinder that relationship.

This implied consent model comes with the so-called lockbox, which allows individuals to instruct their health care providers not to disclose their personal health information to other health care providers. Now, I know that there may be some opposition to this lockbox, particularly from health care providers, but it is important to note that an instruction not to disclose does not preclude disclosure. It just means that you have to obtain express consent from the patient before the disclosure can be made.

Also, in the event that an individual does exercise the right to have certain personal health information withheld from disclosure, there are safeguards built into the legislation to ensure that health care providers inform any recipients that not all of the personal health information they may require has in fact been disclosed. This places them on notice. This will ensure that recipients know that they should be approaching the individual regarding withheld personal health information to explore the possibility of obtaining consent for that information. These are all very significant improvements over previous drafts of health information privacy bills.

Now for my concerns. I'm going to talk primarily about one major concern. While this legislation is clearly better than anything we've seen to date, I have one enormous concern, and that relates to my office's powers, or lack thereof, in conducting reviews and investigations. I'm particularly concerned about my inability to compel production or inquire into records of personal information without consent unless I apply for a warrant and a justice of the peace agrees to this. Such a limitation on a privacy oversight body is simply unheard of. No other jurisdiction in Canada or elsewhere, no other commissioner, is subject to this limitation, and I am quite frankly baffled by this requirement in the bill. It's an insult. It makes no sense to me. It would cripple us in terms of our ability to conduct effective reviews and investigations.

Since the conditions under which a warrant may be issued are very limited and do not include circumstances in which I merely need access to personal health information, conducting effective reviews and investigations will be virtually impossible in many cases. How can I conduct a review without access to the very information that is the subject of that review? It's perplexing.

It's important to point out that this type of restriction on access to personal health information does not apply across the board but only to my office. The legislation permits the use and disclosure of personal health information without consent and without a warrant for a wide range of purposes to an individual, such as the following: an individual conducting an audit, the chief medical officer of health, a health professional regulatory college, the board of regents under the Drugless Practitioners Act, the Ontario College of Social Workers, the public guardian and trustee, the children's lawyer and the Children's Aid Society, among other things. I'm not objecting to this, but they can all access personal health information without consent and without a warrant and we can't.

So I simply can't fathom why there would be greater restrictions on access to personal health information for the oversight body administering and enforcing the Health Information Protection Act than there are for other organizations administering and enforcing other legislation. My office has an excellent reputation, and we have earned the trust of the public, who routinely turn to us when they encounter difficulties with personal information. What justification is there for requiring a warrant before personal health information may be disclosed for a proceeding before the commissioner?

#### 1010

It's also important to note that unlike other potential recipients of personal health information, my office would be bound by strict confidentiality provisions set out in section 66 of the Health Information Protection Act, as we should be. So we could never use the information for any other purpose nor could we disclose it to anyone, nor would we. Just look at our track record. In virtually all jurisdictions with privacy legislation, including jurisdictions with legislation specifically governing the health sector, the commissioner is permitted to access any necessary information, including personal health information.

This legislation must be amended to ensure that my office has access to whatever information is necessary to conduct an effective review. Only then will we be able to assure the public that health information custodians are indeed living up to their obligations under this legislation.

I'm also concerned that the commissioner's inability to compel testimony presents a problem. You may recall an investigation that my office conducted into the disclosure of personal information by the Province of Ontario Savings Office, POSO for short. In that case, we were unable to conduct a thorough investigation into the

disclosure of very sensitive financial data. It was very frustrating. The primary reason we couldn't do this was because a number of key individuals simply refused to be interviewed; they would not co-operate with our investigation and I did not have the power to compel them to do so. The result was a report that could not satisfy the public's right to know the full details of a government institution's non-compliance and unauthorized use of personal information. That, to me, was untenable.

In virtually every other jurisdiction with some type of comparable legislation, including Canada federally, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Australia and New Zealand, the privacy oversight bodies have the power to require the testimony of individuals without a warrant. I see no reason why Ontario should fall short in this critical area.

It is also important to note that without this power, the proposed legislation may run a serious risk of not being considered substantially similar to the federal legislation, the Personal Information Protection and Electronic Documents Act, and it is essential that it be deemed to be substantially similar. This would be a most unfortunate and unnecessary outcome.

Privacy oversight bodies operate primarily as privacy advocates, advisers and educators, ensuring compliance with legislation through establishing co-operative relationships with trusted keepers. When an issue of non-compliance arises, the vast majority of cases can be resolved through mediation, education and persuasion. That's the first route that we always pursue, as opposed to imposing penalties or sanctions. For example, under the existing public sector legislation in Ontario, over 80% of privacy-related complaints and appeals are resolved informally through mediation and other alternative dispute resolution methods. We take pride in this. Rarely do we have to resort to issuing a formal investigation report or ordering an institution to take some remedial action to ensure compliance.

In the proposed legislation, the powers of the commissioner to compel testimony and to demand the production of records only exist within the context of an inspection with a warrant. This would force my office to resort to obtaining a warrant on a much more frequent basis instead of pursuing the more desirable informal route of mediation. Since a search warrant is almost always associated with criminal or quasi-criminal activity and issued in order to force individuals to take some action that they would not otherwise take, in my view, conducting investigations with a warrant would be embarrassing and humiliating to health information custodians, who are generally viewed as the trusted keepers of personal health information by the public. They are usually very willing to co-operate in resolving any issues of non-compliance.

So the routine use of warranted powers would be very counter-productive because it would change the nature of the relationship between the oversight body—in this case, my office—and the health information custodian from a co-operative one to an adversarial relationship.

This is the last thing I want. We've worked very hard over the years to develop very strong positive relationships with numerous organizations, and I think this would truly set us back.

It would also make the entire complaint resolution process far more costly, more formal and more adversarial in nature. As a result of this, it will be less accessible to the general public.

For all of these reasons, we strongly urge the deletion of sections 57, 58 and 59 of the proposed legislation and a complete redrafting of the provisions relating to the powers of the commissioner in conducting a review. I ask that you please refer to our submission for specific proposed language, which we've drafted for these purposes.

In summary, our recommendations would eliminate the concept of investigations with warrants and they would provide my office with the much-needed power necessary to compel testimony from witnesses and to access personal health information during a review.

In our written submission, you'll find a number of other recommended amendments, which I'm not going to review for the sake of time and to allow you some time for questions. I think these amendments would further enhance the privacy protections provided by the legislation in order to promote harmonization with legislation in other jurisdictions, particularly the federal Personal Information Protection and Electronic Documents Act, and to facilitate implementation of the legislation. I invite you to read our submission for greater details on all of our recommendations.

Thank you very much for your kind attention. I am, of course, here to answer any questions that you have, and I urge you to feel free to call upon me in my office at any time if we can assist in this bill progressing through the legislative process. Let me end by telling you how delighted I am that the bill is moving forward and that we actually may see it enacted.

**The Vice-Chair:** Thank you very much, Ms Cavoukian. We'll start with the third party, with two minutes each.

**Ms Shelley Martel (Nickel Belt):** Thank you very much for being here today. We are on round three or four at least of privacy legislation. I don't pretend to know what the requirements were in the others. But with respect to your own powers and with respect to the issue of warrants and the compelling of evidence, which you have stressed to us needs to be changed, what did the previous legislation say, and is this a new version, is this a limitation of powers that was not seen before, or are the sections completely new?

**Ms Cavoukian:** The previous draft of Bill 31?

**Ms Martel:** This is the third draft, I think, of privacy legislation. You would have looked at some of them before. Are these new restrictions?

**Ms Cavoukian:** It's not entirely new, regrettably. We have suffered from this encumbrance for a while—I'll ask Ken to expand on that—but for some reason these powers, which do routinely appear in other statutes and



for other commissioners, appear to be consistently lacking in bills of this nature here.

**Mr Ken Anderson:** I think there's been a particular question as to whether a major case called the Inco case would in fact have some negative impact on the powers of our office, and there was a subsequent case called the Jarvis case, which came along after the Inco case, which we feel completely vindicates our legal position and is a major Canadian case.

When you view this whole issue about powers, about compelling testimony, about requiring production of documents and so on, and you look at what is the state of the law in Canada, we believe that constitutionally the recommendations that the commissioner is proposing are totally appropriate and they don't offend the charter.

**Ms Cavoukian:** When I discussed this bill in that one area with my colleagues in Canada, my fellow commissioners, they were astounded. They simply can't believe that those restrictions exist here.

**Ms Martel:** That was going to be my next question, because I gather there are three other provincial jurisdictions that have privacy legislation in some form or another. I don't know who their oversight body is, if it's the commissioners in those provinces. Do you know if that's the case?

**Ms Cavoukian:** They have the powers. There's Quebec, British Columbia and Alberta. I've spoken to all my commissioner colleagues there, and they have the powers.

**Ms Martel:** Specifically related to health information and privacy for health information?

**Ms Cavoukian:** Saskatchewan, Alberta and Manitoba have specific health information legislation. British Columbia has broad legislation which is private sector legislation but includes health information, so it's not specifically a health information statute but includes the protection of that. And Quebec, of course.

**The Vice-Chair:** Thank you. Any questions from the government side?

**Mr Peter Fonseca (Mississauga East):** Commissioner, thank you very much for being here today and presenting to us. It's always nice to see you.

I wanted to ask, in regard to the consent that you would get from the individual to investigate, would that not give you the right to access their records?

1020

**Ms Cavoukian:** In a number of cases you simply don't have the luxury of going to all the individuals involved to obtain their consent to review their records. So if we have a complaint relating to disclosure—an unauthorized use, for example, of a number of records in a hospital—to attempt to obtain consent from each of those individuals, which could number into the hundreds, often makes it extremely difficult, and it ties your hands in terms of proceeding with the investigation.

Again, I remind you that no other investigatory body is subjected to that restriction, and in this very bill, all these other people I named can do it without consent and without a warrant. So why can they do it and I can't? It's

truly perplexing. I think it's just a flaw in the bill that was not carefully reviewed.

**Mr Fonseca:** In terms of an individual case, you do get consent by that individual, if an individual patient asks you to look into something within their own records?

**Ms Cavoukian:** Of course, and if an individual patient is initiating a complaint, by virtue of them bringing the matter to our attention, we are obtaining their consent, and clearly we're not going to review any records that they would not wish us to review. But then you point out that that may impose certain restrictions on the nature of the investigation. The complainant is rarely the problem.

**The Vice-Chair:** Thank you very much. We'll move to the opposition.

**Mrs Elizabeth Witmer (Kitchener-Waterloo):** Thank you very much, Commissioner, for being here. I'm sorry that I didn't have a chance to listen to your presentation, but I guess what we were hearing yesterday from the colleges was their concern about the lack of supremacy of the RHPA and the fact that they had concerns about their ability to deal with their members. Could you speak to that issue, please?

**Ms Cavoukian:** Certainly. Of course we value the work of the colleges and in no way wish to interfere with their ability to engage in disciplinary practices or whatever duties they're engaged in. Our reading of the bill does not suggest that there is a conflict. Our reading of the bill—and I'll ask Ken to expand on that—suggests that Bill 31 does not override the authority of the regulated health professionals to collect and use personal information. We think the current wording is sufficient and we don't think there should be a general carve-out from Bill 31.

Having said that, I would defer to the Ministry of Health and Long-Term Care in reviewing this, because certainly our intention is not to create any obstacles for the colleges. They must engage in their duties. We don't want to interfere in that. Our reading of the bill, though, suggests that there is in fact no conflict. I'll ask Ken to expand on that.

**Mr Anderson:** What I'll do is expand by giving you the reference, because I'm sure you don't want to go through sort of a technical line by line, although if you do, I would do that.

Section 6 concerns interpretation of the bill, of the draft legislation. In subsection 6(3) there's a section for permissive disclosure. Under 6(3)(b) it indicates that a provision of the act "does not relieve the custodian"—the health information custodian—"from a legal requirement to disclose the information." So there's a permission there.

Then, if you go over to 42, "Disclosures related to this or other acts," 42(1)(b) specifically indicates that "A health information custodian may disclose personal health information about an individual," and there's a series of different groups that are listed; one of them is "to a college within the meaning of the Regulated Health

Professions Act, 1991 for the purpose of the administration or enforcement of' various other legislation as well.

So it's our reading of this that we think they're already OK. We don't object, in any event, to them doing the work they need to do—good and useful work. If the staff and the Ministry of Health and Long-Term Care find a need to make some different provision, that's fine by us.

**Mrs Witmer:** That's fine by you, you're saying? OK. So I guess the concern is their ability to discipline their members to make sure that nobody could hide behind this act.

**Mr Anderson:** That's right. We think the act is currently sufficient as we read it, but if it's not, I'm sure the ministry can address it.

**Mrs Witmer:** You would support clarification?

**Ms Cavoukian:** Yes, because clearly this bill is not intended to, nor should it, serve as a shield in any way in the context of a disciplinary action.

**Mrs Witmer:** That's right; that's the question. OK, great. Thank you very much.

**The Vice-Chair:** Thank you for your presentation.

#### ONTARIO DENTAL HYGIENISTS' ASSOCIATION

**The Vice-Chair:** The next group is the Ontario Dental Hygienists' Association. Good morning and welcome. We'd appreciate it if you could identify yourself before speaking, for the record.

**Ms Sandra Lawlor:** Good morning. My name is Sandra Lawlor. I am here today presenting on behalf of the Ontario Dental Hygienists' Association, known as the ODHA. I'm a practising dental hygienist from Hamilton and serve as past president of the association. Joining me today is Margaret Carter, the executive director of the ODHA.

Dental hygienists are a self-governing profession regulated by the College of Dental Hygienists of Ontario under the Regulated Health Professions Act, the RHPA. The Ontario Dental Hygienists' Association represents approximately 6,000 dental hygienists across the province, accounting for approximately 85% of the total number of dental hygienists registered to practise in the province. We are one of the largest health associations in this province.

Dental hygienists do more than just remove plaque and floss teeth. We contribute in large part to our patients' overall health through the prevention of oral disease and the promotion of oral health care. Dental hygienists provide a process of care that involves assessing the oral condition, planning the treatment, implementing that plan and evaluating the results.

Access to and exchange of health information are critical to the practice of dental hygiene. In many instances, dental hygienists are the first health care practitioner a client sees in a dental clinic. As part of our oral health assessment and evaluation, the first visit to a dental clinic will usually involve an interview with the

patient. At this time, information is gathered relating to the client's medical history and a comprehensive health record is established and completed. This health record will form the basis for subsequent examinations and diagnoses by other practitioners such as dentists.

Such a comprehensive medical history is required in order to provide the safest and most appropriate care. For example, if a patient has recently undergone joint replacement surgery, the possibility of infection from teeth cleaning rises due to the bacteria in the mouth being released into the bloodstream as the plaque and tartar, the hardened deposits, are broken up and removed. The dental hygienist would need to ensure that these patients are appropriately pre-medicated with antibiotics.

The protection of personal health information is something that our association and its members take very seriously. It is for this reason that the ODHA unequivocally supports the principles behind Bill 31. We are pleased that this bill has been introduced and look forward to its successful passage and subsequent implementation. We congratulate the government for treating this matter as a priority and bringing this bill forward so quickly. Dental hygienists, like other health care professions, were increasingly concerned at the uncertainty and the vacuum created in Ontario by the previous government that led to the application of PIPEDA on January 1. We have all had to go to the time and expense of implementing PIPEDA for what now appears to be an interim period of a few months.

**Ms Margaret Carter:** The ODHA had a number of reservations concerning the previous legislation that was introduced in 2000. We are delighted that many of our concerns have been addressed with this bill.

For example, the previous legislation allowed for a number of instances whereby personal information could be disclosed without a person's consent. One such instance was for fundraising purposes. The ODHA was fundamentally opposed to allowing the health care custodian to release personal health information for fundraising purposes without the patient's consent. We are pleased that Bill 31 addressed that concern and now requires the explicit consent of the patient before any information can be disclosed for such purposes. As well, the ODHA is satisfied that directed disclosures by the Minister of Health and Long-Term Care are no longer permitted as they were in the previous legislation.

#### 1030

We are especially pleased that the appointment of a designated contact person is no longer mandatory for sole practitioners. Instead, health information custodians who operate an independent facility with only a small staff—if they have any staff at all—like some dental hygienists throughout the province, are now given the option of performing the functions of the contact person themselves.

Dental hygienists who operate independent clinics already follow stringent health record management policies and procedures defined and enforced by the College of Dental Hygienists of Ontario. We are pleased



that there will not be the extra burden of hiring a separate contact person to ensure compliance with this bill.

While we support Bill 31, the ODHA still has a few minor concerns that we feel, if addressed, will further enhance the principles behind the protection of personal health information.

The ODHA is of the firm belief that explicit and informed consent should be at the heart of any privacy legislation, as it is with any treatment and as it is with the federal legislation. We like the formulation of the federal legislation, the PIPEDA—namely, that information cannot be collected, used or disclosed without consent, and information can only be collected, used or disclosed for the purposes for which the consent was given. Bill 31, as was the case with the previous legislation, still allows for the collection, use and disclosure of personal health information without consent in a variety of circumstances. For example, clause 35(e) allows the collection of personal health information from a third party without patient consent or knowledge.

The ODHA recognizes that the requirement to obtain case-by-case, informed consent before disclosing a patient's health information could be a costly and time-consuming endeavour. Many businesses that have been working to comply with the federal privacy legislation have expressed this very concern. The ODHA suggests the creation of a standardized consent form specifically for research purposes. Patients receiving treatment, regardless if they are visiting a dental hygienist or any other health care professional, would be asked to provide consent in advance, thereby eliminating the time and cost involved in contacting individual patients. It would then be up to the patients to determine whether their information may be divulged for research purposes. The form would explicitly state that confidentiality would always be protected and a time limit would be imposed on disclosure.

Section 50 of the bill gives the patient the right to access their own personal health information, as well as the right to request correction, which is in section 53. However, there are certain exemptions whereby the health information custodian is not required to comply. We believe that the right of access and the request to correct one's own personal health information are an essential part of privacy protection and should be unrestricted. Therefore, any exclusions should be avoided.

We understand that a dental hygienist providing care in a municipally-owned long-term-care facility, for example, would be governed by the provisions of the Municipal Freedom of Information and Protection of Privacy Act. To avoid confusion, to ensure equal treatment and to minimize implementation and enforcement costs, we suggest that this legislation clearly and concisely outline the proper procedures and guidelines that all health care custodians must follow, regardless of the type of facility or practice setting.

In this vein, we are also concerned that Bill 8, Commitment to the Future of Medicare Act, 2003, currently before the Legislature, would authorize another

stream for access to and disclosure of health information—that is, section 13—that would operate quite independently of the bill before us today. In fact, as currently written, section 15 of Bill 8 would prevail over this bill and would require personal information to be disclosed without consent in the situations listed there.

Lastly, once Bill 31 has been passed, we hope there will be an extensive consultation process prior to the drafting of any regulations. The ODHA will be happy to participate in these consultations.

**Ms Lawlor:** In conclusion, the ODHA supports Bill 31. We recognize that it will go a long way to protecting personal health information while at the same time ensuring that the information required for treatment by the health care team will continue to be available.

That concludes our formal comments today. We would be happy to take any questions you might have.

**Mr Fonseca:** Thank you very much, Margaret and Sandra, for coming out on this quite Canadian winter day. It's great to have you here.

I'm so glad that you support Bill 31 pretty much in most of its entirety. I wanted to ask you, in regard to the balance of the bill: Does it bring enough balance between the individual and the health information custodians?

**Ms Lawlor:** I think, having read through the bill, yes, it does. It's a good balance. It's not so terribly restrictive that you can't, in that dialogue with your clients, get the information you want. There are only those few points that we were a little bit concerned about.

**Mr Fonseca:** I'll take those under advisement. Thank you.

**Mrs Witmer:** Thank you very much for your presentation. As you've pointed out, we've been at this for a long time. Governments have been able to take your previous advice and now you have some final areas where you'd like to provide your input.

You mention here that you'd like to be involved in the drafting of the regulations. I guess I would just ask you, are there any regulations that are to be drafted that would give you reason for concern, that you think in particular are going to require considerable input from yourself and perhaps some of the other health stakeholders as well? What do you think are going to be the key ones?

**Ms Lawlor:** I think initially the very fact that this government has established such an open dialogue has been a very major plus for us as a health care profession. As part of that, we see that the continuation of that would be to have dialogue and input during the creation of regulations.

**Mrs Witmer:** So there aren't any regulations in particular that you think you want to be involved in? There is none that you think is more important than any others that are going to be drafted?

**Ms Carter:** I would say that our major concern would be ensuring that it's a process that's easy to implement at the health care professional level. That would be what we would be looking at through the development of those regulations.



**Mrs Witmer:** When you talk about consultations and you think about the number of groups that obviously want to give additional input, what do you think the best way would be to hold these consultations? Is there a vehicle or mechanism that you think the government should be using?

**Ms Carter:** Certainly the health care professionals as a group often meet as a coalition of health care professionals and often approach such bills in a joint manner, to ensure that we're looking at the same issues, and if we identify the same issues, we often bring forward the one voice as opposed to tying up everybody, saying the same thing.

**Mr Jerry J. Ouellette (Oshawa):** I know the dental hygienists are trying to gain independence from the practice and profession of dentistry. What do you think the cost and impact will be of maintaining and controlling the records of individuals? I've met with hygienists in my riding, as other members have, and they want to go into seniors' homes and have those abilities. Who do you think the responsibility for maintaining and controlling the information in these records should fall upon, and how is it going to impact your profession?

**Ms Lawlor:** First of all, I would like to point out that dental hygienists are separately regulated from dentistry, so that, in and of itself, is an independence that didn't exist before in oral health that does presently exist.

The situation is that if dental hygienists were able to practise independently, the same implications of the bill apply to them as they would to a dentist who owns his own clinic, to a dental hygienist who owns her own clinic, and to a dental hygienist who perhaps does long-term care. We believe the regulations cover very clearly the role of the health information custodian.

**Mr Ouellette:** Do you think it would be very onerous on them to maintain these records and control them?

**Ms Lawlor:** No more onerous than it is on us in a dental practice, where we work with dentists.

**Mr Ouellette:** I can just see a cost adding in to the factors as this comes forward, because the control of the records has been expressed by other groups as being rather expensive, maintaining and controlling them over periods of time.

**Ms Lawlor:** It's always one of the costs of doing business.

**Ms Martel:** Thank you for being here today. I have two questions. The first relates to fundraising, because you were quite explicit that you were opposed to fundraising being permitted without express consent.

We heard quite a compelling case yesterday from one of the hospitals in terms of the money raised through the foundation and where those funds would come from for research and equipment if this were not allowed. One of the suggestions to come forward—and while she didn't focus on it, the Information and Privacy Commissioner also has this in her brief—is that one way perhaps that you could get around this would be to have an initial contact of the patient by the health care organization and the patient at that point being offered an opt-out oppor-

tunity, and every time a fundraising letter was sent that same opportunity being provided. Would that be a mechanism that could be used that would make you more comfortable?

1040

**Ms Lawlor:** I would think so. You just don't want to provide information about a client without their permission. So if there is a mechanism by which they can approve that, I would be comfortable.

**Ms Carter:** I think it still comes down to consent, and so if there is an opt-out option, then that's addressing that issue.

**Ms Martel:** She also said that in cases where there was a very specific health care facility that could be construed as being sensitive in terms of treatment provided, you might request express consent. So she has allowed for a provision where clearly people may want more protection than others. I think we do need to do something about that, because I think the money that we're looking at in terms of what could be potentially be lost is going to be difficult to come up with.

The other question I had had to do with municipal freedom of information. If I'm understanding you correctly, it would be your view that what should prevail would be the provisions of this bill, regardless of the workplace or the health care setting, and regardless of whether that health care setting normally would be regulated under municipal freedom of information. Am I understanding you correctly?

**Ms Carter:** We're certainly prepared to address that further in our written submission, but our point is that we want to know that it's clear to our members which bill will prevail and what the rules and process will be. That is our issue, because right now there is some question.

**Ms Martel:** Thank you.

**The Vice-Chair:** Thank you for your presentation.

## ONTARIO HOSPITAL ASSOCIATION

**The Vice-Chair:** The next group is the Ontario Hospital Association. Welcome. You will have 20 minutes. If you could please identify yourself for the record before you speak, you may begin.

**Ms Hilary Short:** Good morning. My name is Hilary Short and I'm president and CEO of the Ontario Hospital Association. With me this morning is Brian Keith, our external legal counsel, and Elizabeth Carlton, OHA senior adviser of legislation and policy. I would like to begin by expressing our appreciation to the committee in allowing us to make this submission today on behalf of OHA and its members, the public hospitals of Ontario.

The OHA has consistently taken the position that the privacy of health care information is a highly sensitive issue, the complexities of which cannot be adequately addressed as part of a general privacy law designed primarily for the treatment of commercial information. We are therefore very pleased to see that the government has heard this message and has introduced privacy legislation devoted exclusively to health information



legislation that is clear and understandable, yet affords individuals the necessary protections in respect to their health information.

I should say that this really is the culmination of many years of work by successive governments, all of which have struggled with this very difficult legislation, and we're pleased to see this finally come to fruition. We would like to thank the ministry staff in particular, who have clearly worked very hard to develop this legislation on such a complicated issue.

The OHA appreciates what a challenge it is to draft this legislation—legislation that protects the privacy of individuals, while at the same time ensures that health care practitioners and facilities have the information they need to provide care to patients in a timely way. We believe that to a great extent Bill 31 achieves this delicate balance, and wish to congratulate the government on taking this step.

We're also particularly pleased with a number of the key features of the bill, such as provisions that provide patients greater rights in respect to their own health information, a workable consent framework for the health care system, and the creation of the position of assistant commissioner for personal health information.

We are also very supportive of including the Quality of Care Information Protection Act as part of Bill 31. Again, this is a goal that the association has been working toward for many, many years. As patient safety experts have universally acknowledged, one of the most important ways we can enhance patient safety is to ensure that information respecting the quality of care provided to a patient is not admissible in legal proceedings. As you can well appreciate, it's very important for hospitals who are endeavouring to promote a culture of openness and one that fosters a full and frank discussion inside hospitals in terms of the discussion of adverse events and near misses. I think you can appreciate that in terms of the recent discussion over infection control.

What our members tell us, however, is that this cannot be achieved unless there are safeguards for information disclosed in such discussions. We therefore believe that these legislative protections are critical in enhancing patient safety and that ultimately these changes will save lives.

Overall, the OHA endorses this legislation. However, in reviewing the specific provisions of Bill 31, we have at the same time noted several areas where we believe the legislation could be improved or strengthened. We will be providing a very detailed written submission to the committee next week, but I'd like to give you an overview of those recommendations today.

Our two chief concerns are, number one, with the type of consent required for fundraising and, second, the so-called lockbox provision allowing patients to withhold or block critical information from health care providers.

With respect to fundraising, we are concerned that the requirement that hospitals seek express consent from individuals will pose considerable challenges. You've

heard much about that already. OHA recognizes that it is fundamentally important to ensure that the privacy rights of individuals are respected, and that patients who do not wish to be contacted for fundraising do not receive unwelcome solicitations from hospital foundations.

However, we believe there are other means to accomplish this, such as providing patients with an opportunity not to be contacted, as Ms Martel mentioned to the last speakers. We would support what is commonly known as the opt-out consent. In our submission, we have provided some indication as to specifically how this might operate in the hospital context.

We must ensure that we protect hospitals' ability to undertake fundraising, because without these donations, which total some \$500 million annually across the province, hospitals would not be able to undertake critical research or renew their capital infrastructure. While it is impossible to quantify with any precision at this time, if passed, these new provisions could severely jeopardize the ability of hospitals to raise the funds they need. At a time when hospitals are already facing severe funding shortages, this could be a serious blow to the bottom line.

You will be hearing more about the fundraising issue in detail, as well as its impact on the research that hospitals are able to conduct. You will shortly hear a presentation from the Ontario Council of Teaching Hospitals, as well as the Association for Healthcare Philanthropy.

Secondly, the issue of the lockbox: While we appreciate the need to ensure patients have an opportunity to control their personal health information, we do feel it's important to alert government as to how this may impact the quality of patient care in Ontario. For many health care practitioners working within hospitals, the right of individuals to effectively block access to what may be very pertinent personal health information could pose real challenges. Hospitals have told us that such a provision may, in some instances, seriously impair the ability of a health care provider to disclose information for purposes that may be essential to the effective delivery of health care, and may thus inadvertently undermine the quality and safety of care to that individual. We would therefore ask that, in the interests of patient care, the government give serious consideration to removing these provisions.

On the substantive matters, we are proposing several specific amendments to the legislation in our written submission. In addition, we are also suggesting a number of technical amendments in the interest of providing clarity and certainty for health care providers in implementing the legislation. Again, these are set out in some detail in our written submission.

#### 1050

Having identified some of the ways in which we believe the bill could be improved, we wish to emphasize again that the OHA fundamentally endorses Bill 31. We are confident that these issues we have raised here today, and in our submission, can be addressed through the



legislative process. We look forward to working collaboratively with the government to find workable and practical solutions so that we may finally move forward with enacting health privacy legislation for Ontario.

In conclusion, we would just like to comment on the matter of implementation. While the OHA acknowledges the need for privacy legislation and commends the government for undertaking the initiative, we do have some very serious concerns about the implementation date of July 1. We believe it will pose very considerable challenges for hospitals. Although many hospitals have done much to develop comprehensive privacy programs, the new legislation sets out very detailed standards for which they will have to develop new policies and practices. We thus believe that some consideration should be given to extending the date.

We need to accelerate immediately the development of guidelines, templates and audit tools for stakeholders and organizations affected by the legislation, as well as information pamphlets and posters for dissemination by providers to the public, because they will be affected by the legislation.

We have already done a great deal of work on this front with our Ontario Hospital e-Health Council privacy and security working group. We have circulated the document that they recently produced, entitled *Managing Privacy, Data Protection and Security for Ontario Hospitals*. As you will see, that document offers detailed templates and guidelines in an effort to create standardization throughout the sector. While that is an excellent resource, it is but one tool, and because it was created last summer, does not provide any specific guidance on how to implement Bill 31.

Although the OHA is committed to working with the government to ensure that such tools are tailored to the needs of hospitals, we certainly would appreciate assistance in this regard and would welcome a commitment from the government to help organizations such as OHA in educating their members and preparing for eventual implementation.

Not surprisingly, we would suggest that the costs of implementing Bill 31 may be significant. New requirements, such as those relating to information practices, consent, the rights of patients to access and correct their health records and standards for electronic health records, will all have financial implications for hospitals. Moreover, as we mentioned previously, the potential loss of revenue resulting from restrictions on hospital fundraising will have an enormous impact on the ability of hospitals to finance capital projects not currently funded by government.

The OHA has consistently supported efforts to introduce privacy legislation. To date, however, legislation has not passed, in large part because it had not been drafted to meet the explicit needs of both patients and the health care community.

We believe that in Bill 31 we have, finally, a piece of legislation that does achieve that balance, and we would urge the government to enact Bill 31 as soon as possible

with the amendments that we are proposing, but within an implementation time that is manageable for the hospitals.

Thank you for the opportunity to present. We would be pleased to answer any questions that any of you may have with respect to our presentation.

**Mrs Witmer:** Thank you very much for your presentation. I would agree with you that I think we are at a point where the legislation certainly is one that achieves the balance that people have been seeking now for a number of years. There remain, however, a few amendments that should be incorporated to make it the best it can be to provide the protection that people need and deserve.

But I guess you spoke here about cost. We have been hearing from various presenters that they believe there are going to be some costs associated with the implementation of this bill. Have you taken any look at what it may cost hospitals in the province of Ontario?

**Ms Short:** We have, yes.

**Ms Elizabeth Carlton:** Actually, we did some of that work when we published the document last summer, and although we didn't provide actual cost estimates, you'll see in the appendices that it does give an estimate of the number of hours just to establish a privacy program, develop guidelines etc.

I think for a medium hospital it was 1,000 hours. So we're looking at, I think, costs in terms of not only staff time, but development of tools and templates, whether it be brochures, pamphlets, notices. All of that needs to be done. Then there's the whole issue of educating staff in a very large organization, because without that education, none of this is implemented appropriately.

**Ms Short:** So we would have to make that assessment, maybe survey our members in terms of what we think the actual dollar cost will be, but it will certainly be—I don't want to hazard a guess, because we haven't done that work, but it will be substantial.

**Mrs Witmer:** That's right. That's why, I guess, for some of the people who are independent practitioners, there's not as huge a cost as there is for an organization such as a hospital. I appreciate that.

As well, you talked to the implementation. I would certainly agree, having been in government myself, we're always very optimistic and we think that maybe we can get this all done by July 1, but the reality is, government moves more slowly when we get there than we realize.

The other thing is, this bill has not even passed yet. Do you have a date that you could see that would be a little more realistic than July 1 as to the introduction of this legislation? What amount of time are hospitals going to need to feel totally comfortable that patients and staff understand the changed environment?

**Ms Short:** What we're suggesting is that first of all, the regulations are going to be quite complex and key to this. So we would suggest that six months following the development of the regulations would be a reasonable date.

**Mrs Witmer:** Thank you very much.



**Ms Martel:** Can I just return to the issue of costs? I don't pretend to understand a dollar value for 1,000 hours. Is it possible—without having surveyed your members, obviously—to put that in a more concrete context for the committee?

**Ms Carlton:** I think we could certainly undertake to provide that in a submission, if that's something that would be helpful to the committee. As Hilary suggested, we haven't surveyed our members on implementation of this, and obviously a lot of it will rest on what the regulations say, how detailed and prescriptive the standards will be to determine what the costs will be. But we will undertake to get you that information in some precise term.

**Ms Martel:** That would be useful.

My second question then is, because a great deal of work went into this, and I assume hospitals were moving forward in response to this, are you going to be starting from scratch, then, with the passage of this bill? Can you give us a sense of how far along you might be, looking at the bill that's before us? I suspect there won't be many changes to it, so that's effectively what we're going to be working with.

**Ms Short:** We will not be starting entirely from scratch, but that was developed under the understanding that there was no provincial legislation that was developed for PIPEDA.

We can expect that it's not just the one-time cost. It would be ongoing costs. As any new development in a hospital, it always adds cost to the bottom line. I would say, certainly, I don't think I'd be far off if I said \$100 million or something like that; I don't think I'd be wildly exaggerating, but we would have to do that detailed work.

**Ms Carlton:** I should add that the document we produced in the summer really sets out best practices in terms of privacy, but it doesn't drill down to specifics as to what you need to do in terms of this particular situation, whether you're dealing with mental health information, if you're dealing with fundraising information, if you're dealing with research. In this bill it's set out in a very detailed manner. We will have to then turn that information into guidelines, templates, so that each hospital knows how to implement it from A to Z.

**The Vice-Chair:** Thank you.

1100

**Mr Fonseca:** I'd like to thank the OHA, Hilary Short, your colleagues. That was an excellent presentation—very detailed and thorough.

If we could just go back to fundraising, what percentage of fundraising do you feel would come through this direct mail for your own—because you brought up fundraising and how it would affect the hospital, the percentage that would come.

**Ms Short:** I'm not an expert. My understanding is that direct mail has always been the most effective method of fundraising for hospitals overall. While they get some very large donations, they really depend on the direct mail.

**Mr Fonseca:** Couldn't you just do it through mailers in your catchment area for each hospital?

**Ms Short:** Again, I think you'll hear from the Association for Healthcare Philanthropy and others that the targeted fundraising to people who have recently received the service of a hospital has been very effective, because despite all of the sometimes negative publicity you hear, generally speaking people are very satisfied with the care they receive in hospitals, and if they have had successful cataract surgery or successful surgery of any kind, they are likely to be quite appreciative of that and are likely to donate after a good experience in a hospital.

**Mr Fonseca:** In regard to the lockbox, if you can give a specific example of how it would interfere.

**Ms Short:** The example we might use—and it's sort of an extreme example—say you were HIV-positive, for example, and you wished to block that information or any kind of other diseases of that nature from other care providers, that could have pretty negative consequences.

Are there any other examples we could give?

**Ms Carlton:** Also the example of there being potential drug interactions and adverse events occurring from that. If one physician is prescribing certain drugs and they don't know what other drugs this individual is on, there's a great potential there for some adverse incident occurring.

**Mr Fonseca:** So then, under this bill, you would let the patient know that this could happen and try to then get consent to open up that box.

**Mr Brian Keith:** Can I just explain one thing? We're talking about information for which you either already have a consent from the patient or you're entitled to collect it indirectly without the patient's consent. So what we're talking about is adding on top of that a provision that in effect allows the patient to go back and censor their own records and allows them to make a decision about what is or is not relevant. That can lead to enormous problems when the patient may not appreciate what the significance of the information is, and it's an enormous investment of time to have to sit down with them and say, "Well, we really do need that, so we'd really rather you didn't cross that out."

**Ms Short:** Again, this has been a long-standing issue of how you protect yourself from your personal health information against what is needed for optimal care.

**The Vice-Chair:** Thank you very much for your presentation.

#### ONTARIO COUNCIL OF TEACHING HOSPITALS

**The Vice-Chair:** The next presenters are the Ontario Council of Teaching Hospitals.

**Ms Mary Catherine Lindberg:** Good morning and thank you, Mr Chairman and members of the committee. My name is Mary Catherine Lindberg, and I'm the executive director of the Ontario Council of Teaching Hospitals. With me today is Martin Campbell, our legal

counsel, and Ken Bednarek, who's working as a consultant with the Ontario Council of Teaching Hospitals.

We thank you for giving us the opportunity to speak to you today about Bill 31. We will also be filing a written submission for February 6. We join the Ontario Hospital Association in commending the government for bringing this legislation forward. There has been a long consultation process, and we are pleased that there has been useful dialogue on this important issue. We are particularly pleased that the government has chosen to introduce legislation specifically dedicated to privacy and confidentiality issues in the health sector, rather than combining health care sector issues with the general legislation covering many sectors. We're also pleased that the government has adopted the concept of both implied and express consent as ways in which patients can give consent to health care providers. The Ontario Council of Teaching Hospitals also commends the government for including the Quality of Care Information Protection Act as part of Bill 31, which we consider to be essential to ensuring full and frank discussion of medical care and treatment without the chilling effect of possible litigation or regulatory scrutiny.

Before I raise OCHT's specific concerns, which are about fundraising and research, I'd like to tell you a little bit about the Ontario Council of Teaching Hospitals and its members. Our members are the 22 academic health science centre hospitals in Ontario. Our members are also members of the Ontario Hospital Association. These hospitals provide highly complex care. They are health care institutions of the last resort. They train the next generation of physicians. They conduct world-class research. They provide over 40% of the patient care in the public hospital sector. They are able to provide this complex care precisely because they have access to research. The wide diversity of care received in our institutions provides the best opportunity to train our students in leading-edge techniques.

Clinical care, health care education and health care research are interrelated. We cannot do one without the other two. The funding that our hospitals receive from the province goes to clinical care. This covers approximately 85% to 95% of the cost of operating a hospital. Hospitals must fundraise for capital, capital equipment and to conduct medical research. Research is funded by the government through peer review research grants, which include some money for overhead. However, for research to happen, there need to be support structures and a place to do their research. The academic hospitals' research foundations raise money to provide the infrastructure for research, namely the construction and renovation of facilities, the maintenance of laboratories and equipment. This is why our fundraising efforts through our members' affiliated foundations are so important. Many patients and their families contribute because they are concerned that research is being done and about the importance of research to their health care.

One of our concerns about the Personal Health Information Protection Act, schedule A of Bill 31, is the

section on fundraising, section 31, which requires health care institutions to get the express consent of an individual before the individual can be approached for fundraising purposes. We think there's a better way to accomplish the policy objective of making sure that fundraisers are not imposing upon individuals and making sure that the fact that an individual has received health care from a health care institution is kept confidential. A better way could be to provide for an opting-out mechanism. That is, at some point during a person's stay in a health care institution, they can sign a form that specifically says they do not want to be approached by health care institutions for fundraising purposes. We think this is a better way to protect confidentiality of information without restricting our members and their foundations from encouraging donations. We recommend that section 31 provide for opting out, as we have set out above.

I would also like to talk to you about section 43 on research. First, we endorse codification of the role of the review ethics boards into personal health information legislation. Given the vital role played by the review ethics boards in approving research and the importance of the public in the integrity of the research approval process, we recommend that the drafting of the regulations outlining the role, composition and procedures of the review ethics boards be given the highest priority. We would be willing to work with the drafters in crafting these regulations.

Section 43 goes a long way toward protecting the privacy of health care information. However, the section does not fully take into account the way health care research is now being conducted. Research takes place all over the world. Clinical trials take place all over the world. Data from many jurisdictions is pooled and shared. In fact, it is a requirement of licensing some products of research that there be large, randomized studies across as many population characteristics as possible. If we need data from many jurisdictions, not all jurisdictions have the same rules protecting privacy. Most jurisdictions respect the confidentiality of health information, but rules vary. We need to have greater flexibility in section 43 to allow us to share information with researchers in other jurisdictions. We cannot restrict the flow of data in and out of Ontario to other jurisdictions. We recommend that section 43 be amended to permit the flow of data in and out of Ontario to jurisdictions that have privacy protections that are substantially similar to Ontario's.

#### 1110

The second problem is that research agreements and clinical trials may run for many years. Longitudinal studies are one of the best ways to measure health outcomes. Section 43 provides a one-year transition phase. We recommend that the transition provision be extended to five years so that research projects and clinical trials which are now underway will not have to be stopped or will not have to undergo extensive revision.



Finally, if any other health care institution has collected personal health care data before the act comes into force and if the data was collected according to the law which existed at the time it was collected, additional consent to the further use of the data should not be needed. We recommend that section 43 be amended to provide for a longer transition period of five years to provide for use of data which has been validly collected in the past without further consent.

We fully support and endorse Bill 31, subject to our recommended amendments. We think it is a great step forward and will codify and improve the way in which health care institutions deal with personal health information. We look forward to the early enactment of the bill.

My colleagues and I would be pleased to answer any questions you might have.

**Ms Martel:** Thank you very much for being here this morning. With respect to fundraising, in two submissions now the sum of about \$500 million has generally been used to describe what foundations are raising. Given your position in terms of the hospitals you're working with, can you tell us what the impact would be, at least to the 22 you deal with? I appreciate that wouldn't represent all of the fundraising going on in the sector, but you've got some of the biggest ones.

**Mr Ken Bednarek:** Yes, we definitely have the bulk of them, and it would definitely have a substantial impact on their ability to raise funds. I think the number they were quoting me was that up to 80% of the funding goes directly to the research initiatives.

**Ms Martel:** So 80% of the money raised goes to research initiatives?

**Mr Bednarek:** Yes.

**Ms Martel:** Do you have a more complete total in terms of what the value of that is? Is that possibly something you could get for us?

**Ms Lindberg:** Yes, we can get that for you.

**Mr Bednarek:** We can try to get that.

**Ms Lindberg:** We actually have it; I just didn't bring it.

**Ms Martel:** That would be great. My second question has to do with research and disclosure to other jurisdictions that you said had similar privacy legislation to Ontario's. We've heard about some of those, at least in Canada; I don't know about anywhere else. Do you have particular wording for an amendment that would deal with what you'd like to do?

**Ms Lindberg:** In our written submission, we actually have some amendments. The issue is, especially in Canada, where we don't have a large population, we do need to share studies, at least across provincial boundaries, to be able to carry out some of the studies that we're currently doing.

**Ms Martel:** Just generally in terms of the length of studies, because the bill talks about the transition period being one year, is most of the research that's being done much longer than that, then?

**Ms Lindberg:** Most of it is done longer. The issue, especially in some of the clinical trial research on drugs, is that you really do need to have an extended period, because everyone knows that we always come up later with the side effects of drugs. Out comes this effective new drug, and then we find out about the side effects. So we need to do longitudinal studies. You have to keep the same patients on those drugs for the same length of time. We've now started some of them; we need to be able to continue them.

**Ms Martel:** Just so I'm clear, the proposed amendment would reference five years after the day the section comes into force?

**Ms Lindberg:** There are a few longitudinal studies that we do in health promotion and those kinds of areas where we go 20 and 25 years. The Ontario health study itself follows the same people, but they've already given explicit consent, so I don't think we'd have to worry about those.

**Mr Fonseca:** I'd like to thank the Ontario Council of Teaching Hospitals, Mary and your colleagues, for a great presentation and for the recommendations you have brought forth. I want to ask something around fundraising: Do you have information about the impact of the opt-out process as opposed to the consent process in the health care fundraising field, and is it used anywhere else in the country that you know of?

**Ms Lindberg:** No, I don't know whether it's used, but I do know we've had some experience with people having to ask for explicit consent and not getting the kinds of results we would have got when you solicit from the patients or the patients' families who have been in the hospital. You do not get the same kind of results in your fundraising. I think Mr Closson mentioned the Mount Sinai experience yesterday.

**Mr Fonseca:** Thank you.

**Mr Ouellette:** Thank you very much for your presentation. A couple of questions. First of all, the drug testing process: Do you see this as initially inhibiting advancing new drugs forward because of the limitations with information?

**Ms Lindberg:** No, I don't think so. The issue would be if they've already started a clinical trial and they have to get the consent in the next year. We're saying, give us five years for us to be able to transfer this routine over.

**Mr Ouellette:** That should cover most of the current ones that are ongoing?

**Ms Lindberg:** Five years should.

**Mr Ouellette:** One of the other things already mentioned by the OHA as well as yourselves is about the \$500 million. The legislation isn't covering out-of-province information, which means you can bring in information regarding residents from Ontario from other jurisdictions. Do you envision yourself as having to buy lists from other provinces or jurisdictions in order to proceed with fundraising as well?

**Ms Lindberg:** No, I don't think we would go to that extent. We would probably try to find another way of soliciting for research.

**Mr Ouellette:** Yeah, \$500 million is a lot of funds.

**Ms Lindberg:** It's a lot of money, but hopefully we can at least get the opt-out provision in.

**Mr Ouellette:** OK. Mr Yakabuski has a question as well.

**Mr John Yakabuski (Renfrew-Nipissing-Pembroke):** Thank you for addressing us this morning. Back to the fundraising issue, the University Health Network spoke to us yesterday and they cited figures—correct me if I'm wrong—of somewhere between a 50% and 70% reduction in their ability to raise funds for capital equipment campaigns, for example. That would be the effect of this bill if enacted as currently planned. Would you concur with those figures? Do you believe them to be fairly dependable?

**Ms Lindberg:** Mr Closson is a member of our association and, yes, we're hearing that from all the hospitals, all our membership.

**Mr Yakabuski:** So this particular section would be one of the most damaging sections to you.

**Ms Lindberg:** Yes, considering that major teaching hospitals have to fundraise for an awful lot of their capital equipment and we are trying to be the leading-edge researchers in Canada and the world. We are always trying to replace to make sure that we have the best equipment there to teach the young students and also to give the best care.

**Mr Yakabuski:** Some others have indicated a concern with the time implementation of this bill. You don't seem to have a concern with that.

**Ms Lindberg:** We were trying not to reiterate some of the concerns of the OHA. We are members of the OHA, so we are endorsing their submission.

**Mr Yakabuski:** So when you say "as soon as possible"—

**Ms Lindberg:** We mean, within reason. Also, we don't want to be under the two acts either, as long as we can get this in. But we need to be able to get the regulations in, and then the approval.

**The Vice-Chair:** Thank you very much for your presentation.

1120

#### COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

**The Vice-Chair:** Now we have the College of Physicians and Surgeons of Ontario.

**Dr Rocco Gerace:** Good morning, Mr Chair and members of the committee. On behalf of the College of Physicians and Surgeons of Ontario, or CPSO, I would like to thank you for the opportunity to participate in today's meeting. My name is Rocco Gerace and I'm the registrar of the college. Prior to assuming this position, I practised emergency medicine for 29 years in London, Ontario. With me is Katya Duvalko, who is the college's policy director. Dr Barry Adams, our president, is unable to be here today.

From the time of Hippocrates over 2,000 years ago, the issue of patient confidentiality or privacy has been one of the pillars of the medical profession. I can tell you that doctors recognize the importance of maintaining patient confidentiality. With that background in mind, I welcome this opportunity on behalf of the college to speak in support of this bill.

As doctors have an ethical obligation to serve their patients' interests, the college has a statutory obligation to serve and protect the public interest. Having said this, we strongly support the need for comprehensive legislation to govern the collection, use and disclosure of personal health information.

As I'm sure you know, the commitment to privacy is a key component of existing legislation, including the Medicine Act and the Health Care Consent Act. Not least is the inclusion of strong privacy provisions in our governing legislation, the Regulated Health Professions Act, or RHPA. Privacy principles are also espoused in the Canadian Medical Association's code of ethics for physicians. We know that our obligation to protect patient confidentiality is clear and without question.

We realize that you have heard or will hear from a number of regulatory colleges, as well as from the Federation of Health Regulatory Colleges of Ontario. We've worked with the federation for some time on the development of health privacy legislation and are strongly supportive of their recommendations.

Finally, there has been extensive consideration of both provincial and federal privacy legislation over the past few years. We know from experience that in moving forward with the current legislation we need to ensure that unintended consequences that may be detrimental to the public interest are avoided at all costs.

There will be others who will speak to the issue of this legislation and its impact on the delivery of care. Our focus this morning is the impact of Bill 31 on the regulation of the medical profession.

With these introductory comments in mind, we have three objectives this morning: first, to describe for you briefly what the college does and how we use personal health information to carry out our statutory responsibility; second, to highlight those provisions of Bill 31 that will allow us to continue to meet these responsibilities; and finally, to illustrate with some examples how the legislation might be improved to ensure its compatibility with our regulatory framework.

First, I'll talk about the college. As the regulatory body for physicians, we are given this responsibility under the statutory provisions of the RHPA. Within this act, our responsibilities include issuing certificates of registration to physicians to allow them to practise; ensuring the quality of physician practice through ongoing assessments and, when necessary, education and remediation; investigating complaints against doctors on behalf of the public; and disciplining doctors who are found guilty of professional misconduct or incompetence. Our college has approximately 26,000 members, and we regulate our members in keeping with the overarching



principle of the RHPA, which is "To serve and protect the public interest."

To fulfill our legislated mandate, the use of medical records is critical. Medical records provide a window into medical practice by doctors. We need to access these medical records to appropriately assess physician performance.

When the college carries out an investigation, we have a number of options to ensure public safety. We can prescribe educational programs to upgrade a physician's practice; we can restrict the clinical activities of a physician; we can suspend a physician from practice or impose terms and conditions; and finally, if necessary, we can revoke a physician's license to practice.

While we rely on health information in our processes, it must be emphasized that section 36 of the RHPA already provides for complete confidentiality of all information. Section 36 states in part that an individual "shall preserve secrecy with respect to all information that comes to his or her knowledge in the course of his or her duties and shall not communicate any information to any other person...." This provision applies to members of the governing council, to council committees, to all employees of the college and to any physician who may be retained as an expert or an inspector.

There are exceptions to the privacy provision. For example, we can convey information about regulatory outcomes of individual physicians to other medical regulators as well as the public. However, these notifications would never include identifiable patient information.

The two main regulatory activities required of us under the RHPA, which are dependent on patient information, are the investigation of physicians and proactive quality assurance programs. I will describe these for you.

First, in respect to investigating doctors: Concerns are brought to the college from a variety of sources. The majority of concerns are brought by patients. The complaints committee considers approximately 1,400 complaints per year. We also received concerns from other individuals such as the coroner, the chief of staff of a hospital or other health professionals. The college and its committees take every concern seriously. In the vast majority, we investigate vigorously. These investigations almost always require a review of patient records. Occasionally, these investigations and outcomes are reported to the profession. In all cases, as mentioned earlier, patient identifiers are removed.

The other major area of regulatory activity revolves around our quality assurance program. We are leaders in this area and are developing new initiatives whereby physicians' practices will be regularly reviewed on a proactive basis. This program is designed to assist physicians to improve the quality of care they deliver to their patients. Again, we rely on patient records to assess physicians and at all times maintain strict confidentiality.

Let me tell you what works best in the legislation. We think that, with few exceptions, the majority of the provisions in Bill 31 will allow us to discharge our regulatory responsibilities in an effective way.

We strongly support the fact that regulatory bodies have not been included in the list of health care custodians. This was an important consideration during earlier discussions, and we are pleased that our collective voice has been heard. There is little doubt that this legislation has come a long way toward reaching an appropriate balance between the competing policy imperatives of protecting individuals' right of confidentiality with the need for disclosure to allow the proper regulation of the profession in the public interest.

The CPSO also applauds the government's recognition that personal health information needs to be addressed through a legislative framework that differs somewhat from personal information collected, used and disclosed for commercial purposes. Separating out the protection of health information into a separate act will go far to ensure that while confidentiality and patient privacy are protected, the delivery of health care in a timely and effective manner is not compromised.

While many substantive components of this bill are left to regulation, the college applauds the provisions in sections 72 and 10 of the HIPA schedules creating an open and consultative regulation-making process. We would endorse this model of consultation for all health legislation.

Finally, some recommendations to improve the legislation: We do have two areas of concern within the legislation. Both concerns could have a negative impact on our ability to regulate physicians.

The first of these concerns is the primacy of the privacy legislation over the RHPA. We are concerned that physicians could use the privacy legislation to avoid regulatory control through the Regulated Health Professions Act. Given that clear considerations for privacy are contained in the RHPA, we feel it is critical that this piece of legislation take primacy over the privacy legislation. Let me give you an example. If a hospital advises us of a suspension of a physician under the provisions of either the RHPA or the Public Hospitals Act when that physician's care has been deficient, given the primacy of the privacy legislation, we may be precluded from investigating using patient records.

Further, as you may know, many dispositions by statutory committees of the college are subject to oversight by the Health Professions Appeal and Review Board, or HPARB. In conducting these reviews it is necessary to forward all information to the board for their consideration. These reviews by HPARB may be conducted at the request of either patients and/or members of the college. The question we have is: Would the primacy of the privacy legislation preclude the sharing of material with the board? We are concerned that the smooth functioning of this established review process not be impaired by the privacy legislation.

1130

Our second major area of concern is with respect to quality assurance programs. The college applauds the special protections afforded to hospitals and other similar institutions. However, quality assurance programs within

the regulatory environment are equally critical in promoting high quality of care by health professionals. We believe that regulatory quality assurance programs should be explicitly included in the special protection afforded in the legislation.

In summary, we would again like to congratulate the government for clearly codifying principles for the collection, use and disclosure of personal health information. However, we urge you to continue to work with us to ensure that we've adequately addressed the implications of this legislation. The legislation must appropriately balance protection of private information with the ability to effectively regulate the profession in the public interest.

Thank you again for allowing us to make this presentation, and we would be pleased to answer questions.

**The Vice-Chair:** Thank you very much. Mr Fonseca.

**Mr Fonseca:** I'd like to thank the College of Physicians and Surgeons of Ontario for presenting here today and for bringing up a number of recommendations. To address one of them, I'd like to know: What would be the risks of giving a blanket precedence to the RHPA over this act?

**Dr Gerace:** I'm not sure there would be any risk, especially in respect to privacy. I think it's our feeling that privacy is clearly protected in the RHPA and would continue to be.

**Mr Fonseca:** We looked at clauses 40(d)(i) and (ii) and clause 9(2)(c). The proceedings include college reviews under definitions.

Section 40 says:

"A health information custodian may disclose personal health information about an individual...

"(d) for the purpose of complying with,

"(i) a summons, order or similar requirement issued in a proceeding by a person having jurisdiction to compel the production of information, or

"(ii) a procedural rule that relates to the production of information in a proceeding."

Would that not take care of that?

**Ms Katya Duvalko:** Let me take a stab at answering that. I think our concerns about the ability of health care custodians to disclose to the colleges have been adequately addressed or could be adequately addressed by a number of clarifications in this act.

The concerns we have would centre around issues outside of disclosures; for example, issues about the use of information that a non-health care custodian gets from a health care custodian. Interpreted narrowly, this legislation could be seen to limit the use to which we put information that we receive. So if a health care custodian discloses, to be in keeping with the legislative requirement, can a college then turn around and use that information to launch an investigation? We think the inference is there that we could, but a literal interpretation of this act would not allow that because it's a different use from the use for which the information was disclosed.

Another instance where we might run into trouble if the primacy of the RHPA is not considered is the whole question of the correction of records. The college fully understands the need in the public interest to allow patients to correct information that is not correct in their records. Our concern is that every once in a while we do run into unscrupulous physicians—there are unscrupulous people in every walk of life—and the provisions of correction and severing of the corrected record from the original record could be used to perpetrate fraud or to correct records in a way that is not at the request of the patient but is the physician trying to cover up some kind of incompetence or fraud or other ill intention. If you put the RHPA as paramount to the HIPA, we think those types of concerns could be addressed.

**Mrs Witmer:** Thank you very much for your presentation. I'd like to focus on the same issue, and that is, the primacy of the RHPA over the privacy legislation. The commissioner was here this morning and I asked her whether or not she thought there was any danger, and she said no, she didn't think so, but she was not averse to amendments being made that would indeed give primacy to the RHPA. So my question to you is, have you or perhaps the federation that is appearing next given consideration to drafting specific amendments that you think would address the concerns that all of the colleges seem to be expressing to us about your ability to deal with your members?

**Dr Gerace:** We have not drafted specific recommendations for that, although I'm sure we or the federation at large would be more than happy to do so.

**Mrs Witmer:** It seems to be the biggest concern that we're hearing from the colleges. As I say, she was certainly not averse that amendments would be added that would allow you to do the job you've been asked to do.

**Ms Duvalko:** That is something the colleges were able to do with previous iterations of health privacy legislation and I'm sure would be very willing to go through a similar process together with the Information and Privacy Commissioner and with government to come to a reasonable solution.

**Mrs Witmer:** I think it would be helpful for all of us. We're at a point where the bill probably is going to be exactly as it needs to be.

**The Vice-Chair:** Any other questions?

**Ms Martel:** As a follow-up to that, I think the second suggestion would be around your second area of concern, which is with respect to the quality assurance programs. There was discussion about this very matter yesterday and some question about whether or not you could do that in schedule B, by an amendment to provisions in schedule B, or whether you leave that to be a regulation, again still under schedule B. My preference would be that we have that clearly articulated in the legislation versus by prescription through regulation. Perhaps you can put forward something to the committee through the federation that would tell us whether or not that needs to be done under the definitions section of quality of care



committee, if that's the most appropriate place, or if there's somewhere else in schedule B that needs to be amended that would more appropriately deal with that particular concern, because I think you're right and we should have that protection. I don't think there's a question among the committee about that. We just need to know the best way to do it.

**The Vice-Chair:** Thank you for your presentation.

#### FEDERATION OF HEALTH REGULATORY COLLEGES

**The Vice-Chair:** Next we have the Federation of Health Regulatory Colleges.

**Ms Michelle Kennedy:** Good morning, and thank you for this opportunity on behalf of the Federation of Health Regulatory Colleges. My name is Michelle Kennedy and I'm the registrar of the College of Denturists of Ontario. I'm accompanied by my colleagues Irwin Fefergrad, the registrar of the Royal College of Dental Surgeons of Ontario, and Tina Langlois, the director of complaints, hearings and investigations for two other regulatory colleges, namely the College of Medical Radiation Technologists of Ontario and the College of Medical Laboratory Technologists of Ontario.

I should note for the record that none of us are actually members of a regulated health profession. We are strictly administrators who have been delegated authority from the Minister of Health to ensure that the public is protected when they're accessing care from regulated health care providers.

Between the three of us we actually represent a fairly broad spectrum. I'm from one of the much smaller colleges. We have approximately 450 registrants in the province, whereas my colleagues are anywhere from 7,000 to 8,000. In point of fact, if you look at the totality of the regulated health professions, we're talking about a quarter of a million people in the province of Ontario.

We're very enthused to be here today to support the legislation. We appreciate the opportunity for ongoing dialogue and input into your efforts.

**Ms Christina Langlois:** In order to really understand the federation, I think you also need to understand a bit about who we are not. It confuses our members from time to time, so certainly it's confusing to others. We are not educational institutions, nor are we colleges or universities. We are not associations of professional members or societies of professional members; we are in fact regulators. All 21 members of the federation are regulatory bodies. Those who serve on executive associations in our professions are generally barred from sitting on the council of the regulatory college.

The regulatory college's function is quite clear: Our mandate is public protection. That is what we were created to do and that is in fact what we do on an ongoing basis.

1140

**Mr Irwin Fefergrad:** Public safety and public protection are what we're all about. You gave us the

authority under the Regulated Health Professions Act to have that function.

We have three basic functions: (1) We register our members; (2) we deal with issues around discipline and complaints, and we are the only lawful body—and I include courts in that category—who can in fact remove licences or impose terms and conditions and limitations on someone's licence; and (3) we offer to the public, through your legislation, quality assurance. We'll talk a little bit about that in our presentation.

Our council or our boards consist not only of members of the independent or individual professions. Government appoints up to 49% of people who are not members of the particular profession to sit on our council. The notion is that in the self-regulatory environment where we are required to protect the public interest, the public needs to have some say in what goes on not only in policy development but as well in those three categories I spoke of: quality assurance, discipline and complaints, and entry.

Finally, what really distinguishes us: We each report at some level to the Minister of Health and Long-Term Care.

**Ms Kennedy:** We're here today to support this initiative. We fully appreciate the importance of the privacy of personal and personal health information and, as such, recognizing that we have our own confidentiality provisions within the Regulated Health Professions Act, fully applaud your efforts in this regard, as we recognize that this iteration of the legislation does differentiate between general commercial activities and the very specific situations encountered by health care professionals in the province of Ontario.

We appreciate the intent of the legislation and look forward to the opportunity to give you some advice on how we could perhaps even improve it to further protect individuals, ensuring that they have access to competent and accountable care, which is why we exist.

**Ms Langlois:** We want to let you know that the federation and its member colleges are not new to the issue of privacy. All the colleges in the federation have in fact been involved in consultations on previous versions of privacy legislation, and each college has taken a leadership role in preparing information up until the end of last month to make their members ready for the application of PIPEDA, the federal legislation. Colleges have been actively involved in this activity, and we would like to share with you our expertise and our understanding of privacy in our own professional environments and things that can be done to improve the legislation in this area.

**Mr Fefergrad:** We're here actually not to ask you for anything, but to offer our expertise. We've been in business collectively for hundreds of years, affecting thousands of members and affecting thousands, if not millions, of Ontarians. We have a vast amount of experience in the regulated health field, and we welcome any opportunity that we can be of assistance to you in this privacy area and in fact in any area involving the regulated health field.



**Ms Langlois:** I have the pleasant job of starting to tell you some of the things we truly appreciate about this draft of privacy legislation. The first, and you've heard it before from our colleagues in regulatory bodies, is the fact that this legislation does not designate colleges as health information custodians. We strongly argued in previous consultations that designation of colleges in this fashion would impair our ability to regulate effectively in the public interest, and we commend the government for taking the approach that it has in not including colleges in the definition of health information custodians and would suggest that that's a very important thing to maintain.

**Mr Fefergrad:** We appreciate the clarity that you've put in the legislation with respect to consent. It was unclear, as you know, under the PIPEDA legislation as to whether the consent provisions in that legislation embodied express consent or implied consent, and we have received, as you know, mixed messaging from the federal privacy commissioner and from the department of industry, whose legislation PIPEDA is. It's very reassuring to the regulators that there is clarity around consent. You've taken the reasonable approach, which we really endorse and welcome and appreciate and thank you for, in suggesting what embodies implied consent and what embodies express consent. We think it'll be rather easy for the members to adapt and in fact to carry out the intention of the legislation with respect to consent.

**Ms Kennedy:** Further, we applaud you for recognizing or attempting to recognize our ongoing regulatory activities through several references and also through ensuring that steps will be taken for open consultation in the regulation-making process, and we look forward to working with you in that regard.

**Mr Fefergrad:** However, the act isn't perfect—nothing in life is perfect—but it's good; it's really good. We would like to offer some suggestions for your consideration that might in fact make it as close to perfect as any privacy legislation in this country can come. We think there are some modifications that can be made that will not at all affect the intention of the legislation, that will not at all affect the IPC and will, in fact, make this a model of privacy legislation, not only in this country but internationally.

**Ms Langlois:** The first recommendation that the federation and its member colleges would have is around the issue of the paramountcy of the Regulated Health Professions Act, which is the act we deal with on an ongoing basis. As my colleague Mr Fefergrad has stated, we were given the authority by the provincial government to license, investigate and discipline members. Even courts don't have this authority. Our concern is that if the RHPA is in fact not made paramount, HIPA may in fact have the effect of somehow eroding that authority or ability to carry out those functions, so we would recommend that it would be appropriate that the RHPA be made paramount to HIPA in order to facilitate our ability to continue to do our very important job.

**Ms Kennedy:** Secondly, we are relieved and appreciate the efforts you have made with regard to the Quality of Care Information Protection Act for facilities, and we would ask that you consider extending that protection to the quality assurance activities of colleges. Quality assurance could in fact be considered a misnomer. It's more so an assessment and enhancement process to ensure that, through voluntary disclosure in a co-operative and non-penalizing format, members or registrants can actually identify their own shortcomings, both on an individual basis and on a profession-wide basis so that those shortcomings can actually be addressed to ensure that there is continuous quality improvement in the health care sector. But to do that effectively, it does have to be voluntary and there does have to be buy-in, which means that information has to be protected so members do not feel they are in jeopardy should they disclose information to the colleges in that regard.

**Mr Fefergrad:** Staying with the theme of paramountcy, I know some of you with previous presentations, and indeed yesterday, had asked for some examples as to how the lack of paramountcy—in fact, quite the reverse; the legislation, HIPA, says that HIPA is paramount over the RHPA—would affect the work that we do that you've given us under the Regulated Health Professions Act. We'll try to discuss with you, if we could, a few examples. The HIPA legislation has a notion that the test for record keeping is reasonable. In fact, there is a notion as well in the legislation that in the event that the records are not in good shape, there is an opportunity for our members to correct the notations in the records. Taking it to an extreme, deficient or no records can be corrected through the HIPA legislation, on the one hand.

On the other hand, the Regulated Health Professions Act requires each member to not only have accurate records but to maintain them in a way that is consistent with colleges' guidelines, and every college has guidelines that impose on its members not just reasonable standards, because there's a lot at stake when the health of the public of Ontario is involved, but accurate standards. We're not interested in excuses when it's quite possible and easy for members to keep records which are accurate. It has implications in terms of, for example, the delivery of health care. A record that is inaccurate or does not contain medication lists, contraindicated medications, allergies, a record that is deficient, may in fact create serious harm to a patient when a subsequent treating practitioner takes a look at that record and tries to diagnose and recommend treatment.

Further, from the regulatory perspective of complaints and discipline, it becomes difficult for us to address the regulatory scheme you've given us under the Regulated Health Professions Act when the RHPA says the standard is "accurate" and HIPA says "reasonable." So in the event we determine, through our council and committees—which, as you know, consist of not only members but public appointees—if it's determined that the records are inaccurate and that is an act of professional



misconduct, it might in fact lead to discipline. But you've provided the member with an absolute defence in HIPA, and that defence is that the test under HIPA is reasonable. Therefore, because HIPA is paramount, the RHPA falls to the wayside. And there are other examples.

1150

**Ms Langlois:** One of the examples that some colleges certainly have to deal with is situations where practitioners and patients are actually colluding to defraud an insurance company. In those situations it becomes extremely difficult for the college to access accurate records and extremely important for the college to access accurate records. Obviously it would be terrible to think that this piece of legislation could somehow be used to allow a patient and practitioner to carry on that collusion and to block the college from ever being able to discover it or deal appropriately with it through their processes.

**Mr Fefergrad:** So we're suggesting that what HIPA does is offer in the regulatory process an unintended consequence, and that is, a defence to professional misconduct allegations. Will it succeed in the end? We're not sure, but the cost of that challenge is formidable.

You've given authority to smaller colleges and larger colleges, and regardless of the size, our budgets are very tight, and to spend thousands and thousands of dollars to withstand the affections of some defence that was unintended has several consequences.

One, it impacts very severely on budgets. Two, it allows the practitioner to continue doing the acts that the college, through the Regulated Health Professions Act, has complaints about, while it trots its way through the divisional court and the court of appeal. While at the end of the day it may not be successful or it may be successful, why not have that legislative safety net that each and every college has suggested is really necessary for the integrity of the Regulated Health Professions Act to continue?

For the time left, we're open to any questions.

*Interjection.*

**Mr Fefergrad:** I'm sorry—I'm reminded by my colleague that in the exuberance of being here, I left out one important example. I apologize.

**Ms Kennedy:** He's an expert at this. I know he looks familiar from yesterday.

The other area where we have concerns that there might be erosion of our authority would be in the area of mandatory reports. Right now the RHPA is very cleverly written in that it gives some latitude to colleges with regard to how they can access information. Dealing with that information is still governed by our regulations and requires that there is due process.

Our concerns with regard to HIPA is that it does speak very directly to disclosure but is silent on the concept of use, and in that regard would potentially hamstring colleges from dealing with concerns with regard to boundary issues, professional misconduct, capacity or incompetence.

For example, one potential is that a reporting facility, an employer, or another colleague would make a report—

perhaps it might have to do with drug abuse—and because it would essentially contain some personal health information with regard to the practitioner, we would be limited in that regard. As well, the practitioner could argue that the use was to advise the college first and foremost and that's it, and then we would not be able to use that information to initiate an appropriate investigation and carry out our duties as protectors of the public.

**The Vice-Chair:** We only have time for one quick question.

**Mrs Witmer:** Thank you very much. I really appreciate the work done by all of the colleges and the way you do protect the public. My question would be similar to what I asked the medical college. Do you have amendments or are you in a position to draft amendments that would guarantee that RHPA would be paramount to HIPA and would continue to provide that protection to the public that I think we all agree is needed?

**Mr Fefergrad:** If you look at section 9, Mrs Witmer, it provides exceptions. Subsection 9(2) says, "Nothing in this act"—meaning HIPA—"shall be construed to interfere with"—and there's a list of things. It looks like there's room just after (e) to insert "the Regulated Health Professions Act." If you inserted that, I think that wouldn't need great drafting and would just give that safety net that I think we all want.

**Mrs Witmer:** Which is pretty simple.

**Mr Fefergrad:** I think so.

**Mrs Witmer:** Thank you.

**Ms Martel:** Except that, if I go to page 5, your request to us was complementary amendments to the RHPA. So which one do you want—whichever's easier?

**Ms Kennedy:** One of the reasons why I think we broached that is that, again, we compliment you on your efforts and realize that there is a purpose to the introduction of this legislation. That was sort of a compromise position. If you could not open up this legislation to make the amendment, we felt that that would be another way to address the concern.

**Ms Martel:** So the preference is the addition of a clause (f) to subsection 9(2).

**Ms Kennedy:** That would be by far the simplest and most effective way to deal with it.

**Ms Martel:** OK. Then let me deal with schedule B and see if you have a similar thought with respect to inclusion of your quality assurance programs.

**Ms Kennedy:** I believe it would actually be fairly simple in the same regard, but we can certainly provide you with formal wording later on in the day.

**Ms Martel:** That would be great. I'm not meaning to put you on the spot. That would be helpful. The easiest way to do it is the one we would, I would assume, move forward with.

**Mr Fonseca:** Of the colleges that were included under the quality assurance provisions in schedule B, would this be a new tool for the colleges, wouldn't you say, right now? How would you foresee the committees that would be set up? What would your role be in setting up those quality assurance committees?

**Ms Kennedy:** In point of fact, our legislation already mandates that we do have quality assurance committees that have a very specific task and mandate. It simply extends the provisions that are accorded to the facilities' quality assurance committees to our quality assurance committees. But that framework already exists and is required. So that certainly would not be a major issue.

I should say—I neglected to mention this earlier—that, for the record, the support for our position as the Federation of Health Regulatory Colleges is in fact unanimous in this case. All of the colleges respect the efforts with regard to protecting the privacy.

**Mr Fefergrad:** She says “for the record” because that's really unusual. We don't agree on very many things.

**Mr Fonseca:** Thank you.

**The Vice-Chair:** Thank you very much for your presentation.

We're going to go for a recess. If anyone wants to leave their belongings here, they can. The door will be locked.

If I could ask the members of the subcommittee to remain for a short discussion, or their substitutions.

*The committee recessed from 1158 to 1302.*

## CANCER CARE ONTARIO

**The Acting Chair (Mr Berardinetti):** Our first presentation is at 1 o'clock: Cancer Care Ontario. Welcome. You have 20 minutes.

**Dr Terrence Sullivan:** My name is Terry Sullivan. I am the provincial vice president of cancer control and research for Cancer Care Ontario. Joining me here, to my immediate left is Dr Alan Hudson, who is the chief executive officer at Cancer Care Ontario; to his left, Mr Peter Crossgrove, who's the chair of our board of trustees; and to my right, Pamela Spencer, who is the general counsel and chief privacy officer. I'd also like to recognize Mr Sid Stacey, who's sitting in the audience, who is the executive director of the Cancer Ethics Review Board for Ontario, which has recently been established overall.

I should start out by saying that we welcome the opportunity to tell you a little bit about Cancer Care Ontario and our interest in this bill. We are very supportive of the initiative of the government of Ontario and the Legislature to introduce an effective health privacy bill for the protection of personal health information.

However, we are not reassured that the bill provides for clear rules on the disclosure of data for Cancer Care Ontario, how we might use it, and how we might use it in working with others. If there is insufficient clarity in the bill, as detailed in our brief, we are concerned that, taken together, a number of core activities that we are now engaged in will be compromised. In particular, because we are host to the Ontario Cancer Registry, a person-specific database about everyone who has been reported to have cancer in Ontario, if our capacity to collect and disclose information is compromised, we are quite

concerned that we will not be able to do a number of important things that we currently do. In particular, if we were interested in trying to identify patterns of cancer associated with certain occupational exposures or certain areas where people live where they may be exposed to toxic exposures, this will be compromised. Likewise, if we are not able to identify outcomes related to patterns of service and care for people with different kinds of cancer, this will be an important problem if we cannot collect and disclose information in a clear and transparent way.

Let me tell you a little bit about who Cancer Care Ontario is and what the burden of cancer is in Ontario. First of all, with respect to the burden, in this year in Ontario, just under 60,000 people will be diagnosed with new cancers and just under half of that number will die during the same period of time. Barring dramatic changes in prevention and screening activity, the number of newly diagnosed cancers will rise dramatically by about two thirds over the course of the next 15 years. We know that half of these cancers can be prevented.

Let me tell you a little bit about Cancer Care Ontario. Cancer Care Ontario is an agency of the government of Ontario and it's provided for in relation to the Cancer Act and under the Corporations Act. We act as the provincial government's chief adviser on cancer issues and we're responsible for planning in the cancer system and for the financing and coordination of a good portion of that system. In this role, we're responsible for setting direction, providing leadership and funding surveillance, prevention, screening, research, treatment and supportive care. We use data from the registry now to project the changing pattern of cancer, and this helps us advise the government on where new cancer centres should be built as a function of the changing pattern and profile of cancer.

As I mentioned, we're also responsible for the operation and use of the Ontario Cancer Registry. This registry is a computerized database of information on all Ontario residents who've been diagnosed with cancer or who've died of cancer. Since the early 1960s, over one million cases of cancer have been registered in the Ontario Cancer Registry. That information comes from multiple sources, including hospitals, pathology laboratories, the registrar general and our own cancer centres.

What are we doing about privacy at Cancer Care Ontario? We take it very seriously. More than a year ago, in advance of any provincial legislation, our board approved a privacy policy based on the 10 principles set forth in the federal legislation. We have in place, as I mentioned, a chief privacy officer who's also our general counsel and an expert in privacy and health law matters. We have a working group carrying forward privacy matters throughout the organization. In addition, we have done a series of detailed privacy impact assessments with respect to our own operations in advance of any provincial initiative with respect to privacy.

Unlike the previous Bill 159, the current bill makes no specific provisions with respect to the disclosure of personal health information to Cancer Care Ontario. We



recognize that there may be a couple of areas in the bill which would allow for disclosures related to Cancer Care Ontario; however, we do believe that we need to have a clear and explicit recognition in the statute.

Our authority to collect information will not be made easier by this bill unless this authority is set out clearly and straightforwardly in this act. Under the Cancer Act, Cancer Care Ontario is permitted to compile information on cancer patients, and hospital and medical practitioners are saved from harm if they provide information to Cancer Care Ontario.

Let me give you one example about how this act may make more difficult the situation as it currently exists. The government of Ontario currently is supporting Cancer Care Ontario to convert the approximately 100,000 paper registrations of cancer that come from pathology laboratories around Ontario to an electronic database. We are currently having trouble because numbers of hospitals have employed privacy consultants to discern what our explicit authority is to collect and use this information for the purposes of cancer registration and surveillance. We would like to ensure that this act makes that quite explicit and clear. So with that in mind, we have a series of recommendations with respect to amending the legislation as it goes forward.

We recommend first of all that section 1 of the bill be amended to provide that one of the uses and purposes of the act is to enable personal health information to be shared and assessed where appropriate to manage the health care system, as part of our role is in the planning and management of cancer services. We note that there is no particular mention of planning in the preamble to the bill.

1310

Second, we request that the disclosure rules set out in part IV of the bill be amended so as to provide that CCO may request a health information custodian to disclose to it personal health information for the purposes of compiling statistics and carrying out research—these are enumerated explicitly in the Cancer Act now—for planning and resource allocation, cancer system management and surveillance. In addition, we also want to ensure that a parallel provision exists for the use of this information under the bill.

Third, we would suggest that Bill 31 state the grounds upon which a health information custodian may refuse to disclose personal health information requested by CCO for purposes identified in recommendation 2 above and set out rules for governing this process by an independent review of such a refusal in a fashion comparable to that which has been established in section 47 of the Alberta Health Information Act.

Our fourth recommendation really relates to the use of the information, paralleling our second recommendation.

Our last important recommendation is that, in the absence of such amendments to the legislation, we would suggest that the Cancer Act be amended consequentially to make explicit the basis on which CCO may collect, use and disclose personal health information, and that

accordingly Bill 31 provide that CCO may collect, use and disclose information for the purposes set out in the Cancer Act.

We have a couple of other recommendations that are consequential for greater clarity, but perhaps I'll stop there at the key recommendations.

**The Vice-Chair:** Thank you very much. We'll start with Ms Martel—three minutes.

**Ms Martel:** I appreciate all of you coming here today, and also that you've been good enough to be as specific as you can with respect to the release of information.

Can you go through with me, if you don't mind, on your page 5—you were giving examples of ambiguity with respect to the intent of section 7. Can you give us some more concrete examples?

**Ms Pamela Spencer:** Perhaps it would help just to indicate what is set out in the Cancer Act, and I apologize for not including a copy of the Cancer Act with the materials.

The difficulty with the section that deals with confidential information is that all it says is that any information that's provided to us will be kept confidential and will only be used for certain purposes—compiling statistics or epidemiological or medical research. It doesn't actually say that anyone may disclose information to us.

Related to that, there is a limited indemnity that's provided in subsection 7(2) that just indicates that certain health providers and hospitals who disclose information to us are protected. What's missing here is a statement that hospitals and other entities may disclose information to us for certain purposes. It's implicit; it's not explicit.

The other difficulty is that the Cancer Act, unlike other provincial cancer statutes, does not make cancer a reportable disease. So when you look at the other acts in, for example, Alberta or Manitoba, what it provides is that hospitals and labs must disclose information related to cancer. What we're looking for is that kind of certainty.

The other difficulty with the section is that it refers to "a case of cancer." That's an issue in terms of at what point in time you've actually got a case of cancer. We've had this argument with many lawyers across the province as to at what point you have a discernible case of cancer. That's very important to us because we're interested in collecting information related to prevention and screening etc before the case may actually be crystallized.

**Ms Martel:** The second question had to do with your recommendation 3, where you referenced section 47 of the Alberta act. What's the review process there? Is it their privacy commissioner?

**Ms Spencer:** Exactly. Essentially what the act says is that—and it ties back to the Alberta Cancer Programs Act in that, as I mentioned, it's a reportable disease. There are certain very specific restrictions upon which a health information custodian may refuse to provide the information to the Alberta Cancer Board, and that's where the safety of the individual may be compromised. What they provide is that there is a process by which the hospital or the refusing party may apply to the commissioner to basically resolve the dispute. So it sets out a process.

**Mr Fonseca:** Thank you very much, Cancer Care Ontario, for your presentation. Looking at section 36, would that not allow for the disclosure that you're looking for, and can you provide an example of a scenario of where and how and perhaps why a custodian would refuse you information?

**Dr Sullivan:** To start with the latter question first, we have a situation now where the Ministry of Health is actually funding a project to convert paper pathology reports to electronic pathology reports. This is obviously a sensible thing to do, because it can be done quickly, routinely and, frankly, with higher levels of security than the transport of paper copies of pathology. So if somebody is diagnosed with cancer, the pathologist sections the tissue, writes a report saying, "Yes, this is cancer of this type, this degree of invasiveness," and that information comes to us.

Right now we are in the process of converting, and we have converted more than one third of all the labs in Ontario, close to half of them now, for electronic pathology reporting. But a number of hospitals have called into question what our authority is to collect this information because, as our counsel has suggested, the language in the Cancer Act is permissive, it's not authoritative, with respect to our ability to collect and use this information.

**Ms Spencer:** With respect to the first part of the question, section 36 just deals with use by a health information custodian. First of all, we are not named in the act as a health information custodian, although we are recommending that we should be named so that our partners in the health care community know that we are also going to be compliant with the information practice rules that are in the act. Even assuming that we were named as a health information custodian, the information still needs to be able to get to us in the first place, so we have to look to the disclosure rules, and there are only two avenues under the disclosure rules whereby we could get this information. One is to be prescribed as a registry, and the other would be to rely on the Cancer Act under section 42(1)(h). As Dr Sullivan has indicated, the difficulty is that when you tie the Cancer Act to the disclosure to us, the Cancer Act is not sufficiently clear.

**Dr Sullivan:** The consequence of that will be that our current situation will be made murkier. If I may, I can't stress enough that the business of collecting and compiling and disclosing information related to cancer patients is our core business. We will not be able to proceed unless we're able to remedy this situation and have a clear reference in the bill.

**Mrs Witmer:** Thank you very much for your presentation. Have you had an opportunity prior to appearing here to have any conversation or dialogue with the ministry regarding, I guess first and foremost, that you would be named a health information custodian, or regarding any of the other recommendations?

**Dr Sullivan:** We had one preliminary interaction in the run-up to this exchange, and the ministry has presented a very open posture with respect to our submission.

In fact, they are party to this submission; they've seen the material as well as you've seen it. We have no clear picture about what their posture is. We're concerned that they may believe that simply identifying us as a registry and scheduling us in this fashion will solve our problem. It will not, because now hospitals and the small industry of privacy consultants that currently exists will be looking to this act to give clarity, and there won't be any.

**Mrs Witmer:** That's right. It's absolutely essential, then, for you to continue with what you're doing, that these changes be made as you have recommended.

**Dr Sullivan:** Yes.

**Mrs Witmer:** They certainly appear to make sense, and we would certainly be supportive. The ministry and the minister have indicated that they are very open to recommendations of this sort. Thank you very much.

**The Vice-Chair:** Thank you for your presentation.

1320

### CARDIAC CARE NETWORK OF ONTARIO

**The Vice-Chair:** Next we have the Cardiac Care Network of Ontario.

**Dr Eric Cohen:** Thank you very much, Mr Chair. I'd like to thank the committee for the opportunity to present today on behalf of the Cardiac Care Network of Ontario. My name is Eric Cohen. I'm a practising cardiologist at Sunnybrook and Women's, but I'm here today in my capacity as an executive member and chair of the clinical services committee of the Cardiac Care Network. I'm accompanied by Joyce Seto, who is a director of information and information technology at the CCN. We may be joined by our legal counsel and adviser in these matters, who doesn't appear to be here yet.

The network would like to acknowledge the recognition by the Ministry of Health and Long-Term Care of the need for privacy legislation specific to personal health information and its expeditious efforts in the drafting of Bill 31. CCN considers privacy to be of the utmost importance and has ensured and will continue to ensure that it has measures in place to safeguard the privacy, confidentiality and integrity of the personal health information in its possession or control.

CCN's commitment to protecting personal health information led it in May 2003 to retain Mr David Flaherty, a recognized expert in this field, to conduct a privacy impact assessment on CCN's information policies and practices. CCN is working toward 100% compliance with the recommendations that came out of that assessment.

The provisioning of patient consent is also being addressed with a pilot currently underway to inform patients on CCN's information practices.

In addition, CCN's executive committee has approved the privacy policies and procedures aligned with the 10 guiding principles as per schedule 1 of the federal act.

The Cardiac Care Network's primary focus is to facilitate timely and equitable access to advanced cardiac services. Specifically, that involves at this time catheterization, coronary angioplasty and bypass surgery. The



network has been in operation since 1990 and consists of 17 member hospitals that perform these adult cardiac services in Ontario. Patients referred for one of these procedures generate a referral, and the referrals are received and collated by hospital-based regional cardiac care coordinators. Information about these referred patients is entered into the CCN registry. This is for the following purposes:

(1) For the tracking of the number of patients waiting for each type of procedure and where they are waiting. That part of the information can be done on an aggregate basis.

(2) For classifying patients according to an objective urgency score. CCN has been involved in refining and validating urgency rating scores to gauge the severity of need for patients needing bypass surgery or cardiac catheterization. This is a crucial step in triage, matching the timeliness of care to the needs of the individual patient, and this relies on patient-specific information.

(3) For tracking what happens at a clinical level to the patients while waiting. This clinical-level contact with individual patients is done by the regional cardiac care coordinators and by the referring and treating physicians at the member hospitals, but the tool for this practice is the patient-specific information in the CCN registry.

(4) In certain situations, efficient system management and optimal individual patient care involves knowledge of workload and wait lists at other hospitals. In other words, if hospital A has a long wait list for a given procedure and hospital B has a short wait list, it may be in the patient's interest to be referred to hospital B instead. This piece as well requires a central registry with patient-specific health information.

In addition to maintaining and compiling the wait list registry, CCN provides information and advice to member hospitals and to the Ministry of Health and Long-Term Care on matters relating to the quality and efficiency of cardiac services provided in Ontario. We use the registry to provide advice on matters relating to equitable access. CCN prepares monthly and annual reports for the ministry and for its member hospitals which contain statistics, including the number of patients on the waiting list, the cases completed, mortality and other adverse events on the waiting list, cancellations and reasons for cancellation, target rates by region and geography, and so on. This information is used by the recipients—the hospitals, the ministry and district health councils—to identify and monitor trends and to help make informed decisions about the provision of and future investment in cardiac care in Ontario.

In summary, CCN assists in facilitating health care for patients suffering from cardiovascular disease by managing a network that generates data about patient need and the status of cardiac care, by facilitating equitable and timely access to cardiac services and by enabling health practitioners to focus on the delivery of quality cardiovascular care. CCN helps to establish guidelines for best data practices to ensure that the quality of data that it puts forth is highly credible and reliable.

Although these appear to be self-evident and compelling reasons for CCN to continue to maintain this registry, it is unclear to us whether under the current wording of the privacy bill we would be able to do so. To walk us through some of the specific areas of concern, I'm going to turn it over to Joyce Seto.

**Ms Joyce Seto:** I would actually like to walk you through our attempts to interpret the bill as it related and applied to the Cardiac Care Network's information requirements. Basically, our information requirements are in a three-tiered system.

The top tier is how we've defined our collection. Our current collection practice is that we obtain information from our 17 member hospital sites. We receive that information on a daily basis, and that information is aggregated into our Cardiac Care Network system. With that, we also have collection for one-time requests made for third party research studies or requests made out of the Ministry of Health. We take information from ICES on a one-time basis, from other health organizations—they could be within province or out-of-province—and also we'd like to position ourselves in the future to obtain information from other hospital sites and health organizations.

That information is disseminated into the Cardiac Care Network system. We use personal health information to collect that information because it's required at that level, and then we also aggregate that data.

On the disclosure piece, the third layer of the diagram, we disclose non-patient-identified information to the Ministry of Health. We disclose personal health information to ICES. Information based on patient consent and non-identified information is aggregated back to our third party research. We provide information that is patient-identified and non-patient-identified to our CCN hospital sites. Our other health facilities are our referring facilities. We provide them with information on a request basis also, and that is patient-identified information.

As we interpreted the bill, the application that we foresee is that the foregoing description of CCN's activities suggests that it fits into the bill under more than one category. In relation to many of its activities, including providing advice about cardiac care to the Ministry of Health and Long-Term Care, member and other public hospitals, and other health organizations, CCN views itself as the "agent" of the hospitals as that term is defined in Bill 31. As such, the transfer of personal health information between the Cardiac Care Network and its member hospitals is characterized as a use of information under subsection 6(1) of Bill 31. On this analysis, CCN is authorized under Bill 31 to engage in most, but not all, of the information practices that are necessary to carrying out its objects. For this reason, CCN is requesting to be prescribed by the regulations under two sections of Bill 31 and is requesting clarification of its authority under Bill 31 or, if necessary, to allow it to achieve its objects as an amendment of Bill 31.

CCN meets a description in clause 38(1)(c) of a "person who compiles or maintains a registry of personal



health information that relates to a specific disease or condition.” Accordingly, CCN is requesting that it be prescribed by the regulations that will be made under the act as such a person.

Secondly, CCN meets a description in clause 33(3)(d) of a person who is “collecting or using the health number, as the case may be, for purposes related to health administration or planning or health research or epidemiological studies.” Accordingly, CCN is requesting that it be prescribed by the regulations that will be made under the act as such a person.

CCN also asks for requests for clarification. In order for CCN to continue with its everyday operations and to ensure that it is in a position to assist in the provision of cardiac care as it evolves over time, CCN must be able to indirectly obtain personal health information of cardiac patients. CCN uses the information it obtains, as described, to link to other data sources, produce statistics and provide advice that assists public hospitals in providing cardiac care and the Ministry of Health and Long-Term Care to administer the health care system and plan for its future on the basis of reliable data.

1330

Accordingly, CCN is requesting clarification as to whether, under Bill 31, it may continue to disclose personal health information, including health numbers, to ICES and like organizations for purposes related to health administration, planning and research. If there is no such authority, CCN respectfully requests the amendment of Bill 31 to permit such disclosure. Although it understands that the mechanics of any amendments are best left to the Ministry of Health, on CCN’s reading of Bill 31, amendments to subsections 38(1) and 33(4) might permit it to disclose personal health information.

CCN is requesting that a mechanism be built into Bill 31 to ensure that CCN can continue to receive the personal health information it requires to provide reliable data and meet the needs of patients suffering from cardiovascular disease in Ontario.

In closing, CCN does congratulate the Ministry of Health for its expeditious introduction of Bill 31, with the anticipation that CCN’s core operations will continue to function under a seamless network of patient care and system planning. We will be committed to continue to monitor our information practices to ensure their adherence to the requirements in Bill 31 and the recommendations made from our internally sponsored privacy impact assessment.

We’d like to thank the standing committee for your time and consideration on the matters raised in this submission. We look forward to working further with you and the ministry to serve the best interests of the people of Ontario.

**Mr Fonseca:** I’d like to thank CCN for your presentation. That was terrific. We’d like to ask what criteria, in your opinion, would be useful for the ministry to consider in deciding what registry should be designated under clause 38(1)(c) of Bill 31.

**Dr Cohen:** I guess we would look toward registries that are disease-specific, registries that have a clear role

in the facilitation of care, facilitation of access, I suppose registries with a clearly defined mandate and scope, and we would certainly hope registries with an established track record, at the very least, as a starting point, because in many ways, similar to the points made in the previous presentation from Cancer Care Ontario, if some of these questions that we have are not clarified or resolved, our ability to continue to fulfill our core mandate, which is the running of this registry to facilitate access to these services, would be compromised. I guess one criteria could be those registries which are essential to facilitate this type of access.

**Mr Fonseca:** Can I also ask about the lockbox effect, how that will affect CCN?

**Ms Seto:** That will tremendously affect CCN. With regard to the lockbox, we rely upon our data. We currently have a full data set. We have 100% participation of our facilities. We believe that it will gravely affect the recommendations of advice that we provide to the system for further planning if the numbers are definitely compromised with that.

**Mrs Witmer:** Thank you very much for your submission. Certainly, as a former Minister of Health, I greatly value the planning and direction that you have given to the Ministry of Health over the years. I can appreciate your concern if there isn’t clarification on some of these issues. Have you had an opportunity to discuss this with the ministry at all?

**Ms Seto:** No, we have not.

**Mrs Witmer:** So actually, this is the first time, then, that the ministry would be hearing your concerns. Hearing them, we’d have to think they certainly would be open to making sure the appropriate clarification is provided in order that you can do the work. Thank you very much.

**Ms Martel:** Thank you for coming here today. Can I ask a question about your point number 3, where you’re requesting clarification and, if an amendment is required, to permit to disclose? Were the sections you were referencing for amendment subsections 33(4) and 38(1)?

**Ms Bonnie Freedman:** Yes.

**Ms Martel:** So you’d need changes in both respects: You’d need an amendment to the legislation and then also to be included in the regulations under that same section to deal with points 1 and 2. Am I correct?

**The Vice-Chair:** Before you answer that, can I please ask you to identify yourself for Hansard?

**Ms Freedman:** Yes, I’m sorry. I’m Bonnie Freedman, and I’m counsel to CCN. The firm is actually Goodman and Carr.

I think a number of amendments would be required. Section 33, of course, is to deal with the health number, and then section 38 is to deal with the disclosure. Some of what will be required will depend on, for example, the characterization of an institute like ICES. Because all of this is a bit unknown at the moment, it’s a little difficult to talk about specifics. I think, at the end of these hearings and perhaps at the next round, we will know better specifically what would be required, because we’ll



have a better idea of where everyone is sitting; that is to say, the institutions and other organizations with which CCN works. It's clear that the member hospitals are custodians; the question is the characterization of some of the other organizations with which information is shared.

**Ms Martel:** Whom you relate to and work with.

**Ms Freedman:** That's right.

**Ms Martel:** Thank you.

**The Vice-Chair:** Thank you very much for your presentation.

## ASSOCIATION OF HEALTHCARE PHILANTHROPY

**The Vice-Chair:** The next presenters are the Association of Healthcare Philanthropy. You may begin.

**Ms Pearl Veenema:** Good afternoon. My name is Pearl Veenema, and I'm the chair, government relations, for the Association for Healthcare Philanthropy in Canada. I'd like to begin by expressing my appreciation to the committee in allowing me to make this submission today on behalf of our association, which includes 390 health care charities nationwide, 200 of which are in Ontario. I'd also like to introduce my colleague Susan Mullin, who is the president of the greater Toronto chapter and chair, national privacy task force, for the Association of Fundraising Professionals. Susan and I and other colleagues in the fundraising field have been working together for over two years on a coordinated approach to privacy preparedness and response as appropriate to draft legislation. In the materials that we have provided, AFP has included comment on Bill 31.

The Association for Healthcare Philanthropy, or AHP Canada, is an international organization of health care fundraising executives and health care institutions dedicated to advancing health care through philanthropy. AHP Canada's mission is to be the primary source of philanthropic expertise in Canadian health care, building on partnerships with AHP International.

Last year, Ontario members of AHP Canada and other colleagues raised over \$500 million on behalf of the province's 225 public hospitals. This money was spent on new health care facilities, medical equipment and technologies that reduce waiting times and improve efficiencies in the health care system; health research, which provides tomorrow's life-saving drugs and therapies and is therefore crucial to our future health care system; and finally, new programs in patient safety and infection prevention and control required to support health care workers after the devastating effects of SARS.

1340

AHP Canada has a long history of privacy protection, having recognized several years ago that privacy is an issue of key importance to many of our donors. This commitment to privacy manifests itself in a number of industry best practice safeguards, which we have adopted voluntarily in the absence of provincial health privacy

legislation. We have included information on these privacy safeguards, such as copies of the donor bill of rights and information in our privacy guide, in the folders in front of you.

The privacy guide is based on the model code for the protection of personal information developed by the Canadian Standards Association and was designed to help our Ontario members respond to privacy requirements under the federal Personal Information Protection and Electronic Documents Act in the absence of provincial health privacy legislation.

We are delighted to see that the government has introduced the Health Information Protection Act. AHP Canada feels that the privacy of health information is a highly sensitive issue, the complexities of which cannot be adequately addressed as part of a general privacy law primarily for the treatment of the commercial sector. We are therefore delighted to see that the government has introduced privacy legislation devoted exclusively to health information.

AHP Canada appreciates what a challenge it is to draft privacy legislation that strikes the right balance between the privacy needs of Ontario patients and the legitimate needs of our health care providers to access personal information for the purpose of delivering patient care. We commend the government for striking the right balance with respect to the delivery of health care and health research.

However, we are extremely concerned about an express consent requirement in Bill 31 for health care fundraising purposes. We feel this requirement is inappropriate for five reasons and, therefore, we are requesting that the government consider an implied consent requirement for health care fundraising, to be achieved through notice and opt-out.

Our first concern: We believe that an express consent requirement is potentially detrimental to patient care. This is because if an express consent requirement were mandated by law, most Ontario hospitals would have to undergo significant process redesign to allow for their clinicians and hospital staff to speak with patients about fundraising. Doctors, nurses and other health care workers have already told us that they are unwilling to take time away from their patient consultations to ask them their express permission to participate in hospital fundraising activities. Instead, health care workers are insisting that they need to maximize the time they spend with patients to provide care. In Alberta, where express consent was required for health care fundraising under the province's Health Information Act, the province's physicians actually refused to talk to patients about fundraising, citing that it would result in a minimum of 780 lost patient consultations on an annual basis.

Secondly, AHP Canada cannot support an express consent requirement for fundraising because this requirement is inconsistent with the privacy expectations of most patients. For example, the average Ontario hospital foundation receives between one and two complaints for every 10,000 to 20,000 mailings on fundraising. More

importantly, however, patients have told us that they do not want to be asked for their consent for health care fundraising, even on a simple registration form.

For example, a pilot study on express consent conducted at Mount Sinai Hospital in Toronto in 2001 generated 75 patient complaints on express consent within the first 90 days of the study. Two common patient quotations from that study are as follows:

"It's not fair for me to have to think about fundraising while I'm trying to focus on the physician's instructions for my elderly mother"; and

"I spend five to seven mornings a month here for fertility treatment. The last thing I want to think about is how I'm supposed to give my permission to be solicited, although I will gladly donate to the hospital."

Thus, an express consent requirement for health care fundraising takes away critical time from patient care, as well as perhaps contributing to unnecessary potential stress in patients.

Third, AHP Canada cannot support an express consent for fundraising because the public health care system requires such enormous reforms over the next decade, reforms which, quite simply, federal and provincial governments are unlikely to finance on their own. The Romanow report estimates that these reforms will cost nearly \$15 billion between now and 2006.

The types of reforms required are programs to increase efficiency and productivity in the system, new programs to reduce waiting times, new strategies for addressing shortages in health care workers, increased partnerships and collaborations between providers and private sector, and the development of national home care standards. Given this long and challenging list of required reforms, our health care system cannot afford to lose one single philanthropic dollar to perhaps a poorly designed consent mechanism which neither the majority of patients nor clinicians in Ontario support.

Fourth, AHP Canada cannot support an express consent for fundraising since health care charities now play an increasingly critical new role in supporting research in communicable diseases and the construction of isolation facilities following the SARS epidemic.

Finally, AHP Canada cannot support an express consent requirement for fundraising since this poses a more restrictive consent requirement on health care foundations than their charitable counterparts in other sectors, such as education or the arts. This does not seem fair when foundations in these sectors are receiving the same type of personal information that hospital foundations receive; for example, names, mailing and e-mail addresses, and telephone numbers, which is all that AHP Canada asks that Ontario health care charities be able to receive with the same implied consent.

Thus, for the five reasons I have described, AHP Canada believes that Ontario hospitals and their foundations should be able to collect, use and disclose personal information for fundraising purposes using implied consent through notice. In our written submission next week, we will outline two options for implementing this.

To summarize, AHP Canada cannot support an express consent requirement for health care fundraising.

Thank you for the time today, and once again thank you for the opportunity to present the concerns of AHP Canada. Susan and I would be pleased to answer any questions that you may have.

**Mrs Witmer:** Thank you very much for your presentation. Just for clarification—I maybe missed it—you represent who?

**Ms Veenema:** The Association for Healthcare Philanthropy. That is an association of fundraising professionals—it's a professional association—across Canada.

**Mrs Witmer:** So would you represent most of the hospital foundations in the province?

**Ms Veenema:** That's correct, across Canada, and my colleague Susan represents the Association of Fundraising Professionals. They represent more than hospitals and health care institutions.

**Mrs Witmer:** So you have the benefit of knowing what's going on across the rest of Canada when it comes to the privacy legislation.

You mentioned Alberta and the fact that the doctors obviously had concerns about asking for the express consent, and we've certainly heard that. I would agree; I don't think it's the role of a doctor to do that. What happened then in Alberta? Did they make changes? Have they made changes?

**Ms Veenema:** The changes they have made are really in investing significant dollars to acquire new donors through what would normally come through the grateful patient basis. We are collecting statistics for our submission from all of the provinces just so that the government can see the impact analysis. In fact, most organizations, where there was express consent, are finding that they are spending 20% to 30% more on their acquisition programs and indeed are seeing great attrition over the years as a result of not being able to have access to grateful patients, who tend to support within a range. Based on the information that we have, 70% to 90% of the income coming in on an annual basis comes from grateful patients.

**Mrs Witmer:** We've heard different numbers as to how much money is raised in the province, but I guess it approximates something in the neighbourhood of half a billion dollars, perhaps. So there could be a substantial loss. I guess the only way that you could make that up is for the provincial government to invest foreign health care, and it's unlikely that they're going to be in a position to do that. So I certainly think and hope that the government—and they've said that they're certainly willing—will consider the impact this is going to have on the ability to fundraise and make some of the appropriate changes without sacrificing the privacy of the information.

1350

**Ms Susan Mullin:** I'm going to add that the AFP represents a broader sector, so we have many health organizations that are not hospital foundations and social service organizations that would also be custodians of



personal health information. So when we talk about hospitals, we have a pretty clear picture of the number of dollars raised. Because these other sectors don't have the same sort of organization and are more broadly represented, we don't yet have numbers—we're trying to pull together some stats—but many of our small organizations are very grassroots-based and their only natural donor constituency is in fact the people who access services.

**Mrs Witmer:** Can you give an example?

**Ms Mullin:** Sure. The organization I work for is Surrey Place Centre Foundation. We serve people with developmental disabilities across the city of Toronto. It would be difficult for us—we're a tiny foundation—to be able to go out and do any significant acquisition donor mailing programs, telemarketing programs, whatever. Some 80% to 90% of our current donors are patients or clients who have been asked to make a gift. So it would have a tremendous impact on us.

**Ms Martel:** Thank you for coming today. I know you're going to put this in a written brief to us, but would you mind going through the preferred options you outlined to give us a practical sense of how you see this working if we could get some amendments?

**Ms Veenema:** I'd be pleased to do so. We have been working with our colleagues and with hospitals—in fact, for the past two years, with the previous draft legislation—to look at some very practical ways in which we could look at implied consent through notice, both through the hospitals and foundations. Again, signage in the hospitals would be one cost-effective way if the hospitals themselves would produce that signage to provide the opportunity for patients and families to be aware of foundations in health care institutions. Therefore, what we're also doing is relying on them to take the next step, which is to want to participate.

Foundations very specifically have been, and have been for more than a year, in particular the larger foundations, investing in donor surveys, both written communications through newsletters, through their telefundraising programs and through direct surveys, informing their donor constituency about the nature of their fundraising programs and asking them very specifically about how they would like to continue to support the philanthropic effort.

Also, foundations now are utilizing their Web sites where in fact the general public has a tremendous amount of electronic savvy and are wanting to go to the Web sites to be able to see the kinds of fundraising opportunities that are available at the respective institutions. Those are some of the ways in which we see that there can be significant notice providing the opportunity to opt out.

Also, there are a number of institutions that have actually begun to include in their printed materials receipts and letters that they would return, thanking people for their gifts, providing them with the opportunity to opt out for future. Those are some of the examples.

**Mr Fonseca:** I thank you very much, the Association for Healthcare Philanthropy. It was a good presentation. I

want to ask, are there a number of processes in place already throughout the province, in terms of opt-out processes? In regard to your fundraising, what percentage of your fundraising—this was asked earlier—of the OHA is done through direct mail, and why could you not use mailers to do a whole catchment area or the lottery type of fundraising that we see going on?

**Ms Veenema:** The stats vary considerably with respect to what percentage of fundraising programs are from the grateful patients. We certainly would be pleased to provide this information in our written submission. I'll give you a few examples.

The Ottawa Hospital Foundation: 90% of their 20,000 active donors are in fact grateful patients. One of the things they did was they tested the response rate with an address on envelopes and so on, something that's fairly personalized, compared to an unaddressed household drop, as you just recommended or asked questions around. As an example, in that particular foundation, 75% of the donors would renew with an addressed program that came from the hospital. A household drop saw a return response of 0.4% to 0.5%, and that is a large foundation.

I'll give you an example of an organization in the Niagara region where in fact the institution has implemented express consent as if it were law, and they have just now cancelled a telefundraising program that generally would provide \$250,000 and a 30% to 40% rate. So now they're doing an unaddressed household drop and the experience within the first two weeks is that there are fewer than 10 responses back.

So your question related to other options around unaddressed or household drops in comparison: Fundraising is about relationships. The relationships that patients and their families feel and the appreciation for their care provide a very natural opportunity to begin a relationship that is very different from those who simply may not receive care. Second, institutions or foundations are challenged from a cost accountability point of view to in fact have the lowest cost per dollar raised, so those other options are significantly more expensive.

**Mr Fonseca:** In both cases, was there a policy and a procedure to opt out?

**Ms Veenema:** In the instance I gave you with respect to the more recent one that I've been called about this week, no; the institution implemented an express consent. So that particular foundation did not receive the 90,000 names that they would have received ordinarily for their telefundraising program.

In the Ottawa program they have implemented the opportunity for grateful patients or for their donors to opt out from receiving further fundraising solicitations, and foundations are not finding that their donor community is in fact asking to opt out. In the London region, with over 80,000 donors, they had fewer than 10 who asked to opt out of future solicitations.

**Mr Fonseca:** Thank you.

**The Vice-Chair:** I'd like to go back to Mr Yakabuski, whom I missed and who had a question.



**Mr Yakabuski:** Thank you for your submission. We're hearing this more and more through these hearings. I can certainly relate a little bit from personal experience. I sit on a capital equipment campaign at a local hospital in my hometown. Also, my wife and I became donors at a particular hospital after our children were patients there many years ago. I certainly understand where you're coming from. The information you're looking for—there's no medical information.

**Ms Veenema:** That's correct.

**Mr Yakabuski:** You're simply looking for the ability to contact these former patients to solicit their support in maintaining the programs and the things you need to do to operate those hospitals outside of the funding from the Ministry of Health. Is that correct?

**Ms Veenema:** That is absolutely correct. We are asking for personal information that relates to name and address.

**Mr Yakabuski:** Other than knowing they were a patient at that hospital, there would be no other medical information you would need?

**Ms Veenema:** That's correct. That is consistent through the Association of Fundraising Professionals and the Association for Healthcare Philanthropy. It's the opportunity to invite patients to support our programs. We do not need to know their areas of service or the type of care they have received.

1400

**Mr Yakabuski:** If the bill were amended to allow for that, but also included an opting-out clause, would that certainly satisfy you? Could you work with that, and that would accomplish what you need to do?

**Ms Veenema:** We could work with that, and perhaps when you have an opportunity to look at some of the recommendations in the privacy guide that we have produced for our colleagues, again, it's clearly stated that that's what we're asking for.

**Mr Yakabuski:** But not having access to those names would severely, critically damage your ability to raise funds?

**Ms Veenema:** Absolutely, quite significantly.

**The Vice-Chair:** Thank you very much for your presentation.

#### SMART SYSTEMS FOR HEALTH AGENCY

**The Vice-Chair:** Next is the Smart Systems for Health Agency.

**Mr Allan Greve:** My name is Allan Greve. I'm the chair of the Smart Systems for Health Agency's board of directors. With me this afternoon are Michael Connolly, who is the CEO, and Brendan Seaton, the chief privacy and security officer for Smart Systems for Health Agency.

On behalf of Smart Systems, I would like to thank you for hearing our submission this afternoon on the important subject of the Health Information Protection Act.

The Smart Systems for Health Agency was established by the government of Ontario in the spring of 2002 to support the effective delivery, planning and management of health services in Ontario. We provide a secure, province-wide information infrastructure for the collection, transmission, storage and exchange of information about health matters, including personal information. The objectives of the Smart Systems for Health Agency are defined in the regulations and direct the agency to, first of all, safeguard the confidentiality and integrity of information about health matters and, second, protect the privacy of individuals whose personal information is collected, transmitted, stored or exchanged by and through the information infrastructure.

At Smart Systems we take all the necessary steps to ensure the security of that information. Smart Systems is mandated to provide information management and information technology services to a number of the major health information systems initiatives sponsored by the Ministry of Health and Long-Term Care and other health system stakeholders. These initiatives will result in the implementation of an information infrastructure that will be available to most health care providers in Ontario and includes the physicians, hospitals, public health units, community care access centres, laboratories and pharmacies. Smart Systems is also mandated to provide leadership in the development and deployment of an electronic health record for all Ontarians.

Smart Systems provides comprehensive information infrastructure services, including secure and reliable communication networks, data centre services, e-mail, on-line directories, Web-based information portal services and comprehensive security services. Smart Systems has established a privacy and security division that is focused solely on the protection of personal information within the infrastructure.

It should be noted that Smart Systems has been designated as an institution under the Freedom of Information and Protection of Privacy Act and is subject to oversight by the Information and Privacy Commissioner of Ontario.

I'm now going to ask Brendan Seaton to discuss our comments in regard to the legislation.

**Mr Brendan Seaton:** In our submission we would like to make three points.

The first is that Smart Systems strongly supports this bill and believes that it is essential to protecting the privacy rights of Ontarians. Furthermore, it ensures the confidentiality, integrity and availability of personal information when it is required for health care purposes.

Second, Smart Systems is uniquely positioned to work with the government and the Information and Privacy Commissioner of Ontario to promote the principles and privacy practices that are articulated in this bill.

Third, Smart Systems would like to offer comments and recommend two amendments to the bill. Our recommended amendments ensure that the services provided by Smart Systems will mesh seamlessly with the information and information systems that are in the custody



and control of health information custodians and their agents, and promote the efficient, secure and private exchange of personal health information.

With respect to the first, it is fair to say that in Ontario we have an uneven patchwork of privacy legislation applying to the health sector. For example, Smart Systems and the Ministry of Health and Long-Term Care are covered by the Freedom of Information and Protection of Privacy Act. Boards of health are covered by the Municipal Freedom of Information and Protection of Privacy Act. Physicians, private labs, pharmacies and other commercially oriented health providers are covered by the federal Personal Information Protection and Electronic Documents Act, or PIPEDA. Many parts of the health system, most notably public hospitals and non-commercial community agencies, are not covered by any privacy legislation at all. This uneven patchwork leads to serious problems of privacy protection in health care. Among these problems are gaps in privacy protection, a risk of conflict between the provincial and federal jurisdictions, and inconsistent application of privacy principles.

The Health Information Protection Act will provide a level playing field and a common set of rules for privacy protection in Ontario. Ontarians will benefit from consistent policies on consent, access to their personal information and the right to challenge compliance with privacy principles. Health care providers, or health information custodians in the language of the bill, will be able to exchange information with others in the circle of care, confident that the information will be appropriately protected. For information technology providers such as Smart Systems, a common set of rules will mean greater acceptance of best practices for privacy and security management and more economical information systems and services.

Smart Systems strongly supports this bill because it will bring order to the current state of confusion in privacy protection, it will increase the confidence of Ontarians that their privacy rights will be respected by all players in the health system, and it will provide technology providers with the framework needed to build strong, private and secure systems.

Our second point is that Smart Systems is uniquely positioned to work with the government and the Information and Privacy Commissioner for Ontario to promote the principles and privacy practices articulated in the bill. Many of the services offered by Smart Systems will assist information custodians and their agents to comply with the requirements of the act, particularly when it involves the secure and private exchange of personal health information.

Health care providers who access the Smart Systems infrastructure can have confidence that personal health information will be protected by state-of-the-art security systems. For example, our secure messaging infrastructure will enable custodians to send encrypted e-mail through the Internet, ensuring confidentiality while in transmission. The same technology allows for strong

authentication, meaning that the receiver of the message can know with certainty the identity of the sender. In addition, the technology can ensure that the message has not been corrupted or tampered with during transmission, assuring the integrity of the message.

In building the information infrastructure, Smart Systems has learned many lessons about how to build information systems and processes that comply with state-of-the-art privacy and security standards. As we implement the infrastructure throughout the Ontario health system, we will be in direct contact with many health information custodians. It has always been part of Smart Systems' plan to promote the privacy and security of information with our customers through service level agreements, policies and training programs. You can be assured that Smart Systems will be an active and aggressive promoter of the principles outlined in this bill and will work collaboratively with the Ministry of Health and Long-Term Care and the office of the Information and Privacy Commissioner to put those principles into effect.

**1410**

In our third point, we want to ensure that the information technology and information management services provided by Smart Systems are captured by the bill in a way that clarifies the role of Smart Systems with respect to health information custodians. We would like to recommend two amendments. The first is to introduce the role of information manager into the bill, and the second is to expand the use of the health number from its current restriction to persons eligible for OHIP to all recipients of health care in Ontario.

Bill 31 introduces three key roles: the health information custodian, the agent and the recipient. In considering its present mandate and service offerings, Smart Systems believes that it is neither a health information custodian nor a recipient as defined in the bill. Indeed, an attempt to characterize it as either would be inappropriate because Smart Systems does not collect, use, disclose or retain Ontarians' personal health information. We do not believe that Ontarians would want an agency such as Smart Systems to have any custody or control of their personal health information or to use that information in any way.

Turning to the definition of "agent" in the bill, the health information custodian retains full accountability and liability for the agent's actions. Because the information infrastructure is provided through an agency of the government of Ontario, custodians will not have the requisite control necessary for them to fully exercise their obligations under the act. Through its regulations, Smart Systems has been specifically established to provide a province-wide secure communications infrastructure—a mandate quite separate from health information custodians. As such, the agency acts independently to develop and implement its products and services. This is in marked contrast to the agent concept and related obligations defined in Bill 31.

We are concerned that defining Smart Systems as an agent, as contemplated in the bill, will discourage health



care providers from accessing our services, because they will not want to be liable for the actions of an agency of the government of Ontario. Where Smart Systems will be acting for tens of thousands of health information custodians, it will be impossible for any one custodian to fully exercise their obligations under the act with respect to agents.

In our analysis of the bill, we have come to the conclusion that the Smart Systems for Health Agency does not fall into any of the currently defined roles. Because most personal health information about Ontarians will eventually flow through or be stored in the Smart Systems infrastructure, it is critical that Ontarians see that their privacy rights, as expressed in the bill, are protected while in the Smart Systems infrastructure.

We believe there is tremendous value in introducing a fourth role to the bill, that of the information manager. The information manager concept is not new. In fact, health information privacy legislation in Manitoba, Saskatchewan and Alberta all define roles for the information manager. The role of information manager was defined in Bill 159, the Personal Health Information Privacy Act, 2000, which wasn't passed by the Ontario Legislature.

Our proposed definition of "information manager" means a person other than an agent with whom a health information custodian contracts for services that include the processing, storage and disposal of records that contain personal health information, or information management, information technology or networking services to the custodian with respect to the custodian's records that contain personal health information.

The information manager will have an agreement with the health information custodian that imposes certain obligations on the information manager by the custodian, but can also be subject to regulations established by the government that govern the manner in which the information manager must handle personal health information. This would relieve the custodian of the sole burden of having to monitor and control the actions of the information manager, while at the same time ensuring that the information manager behaves appropriately. We would suggest that the Information and Privacy Commissioner have direct oversight of the activities of an information manager such as Smart Systems.

We believe the role of information manager provides a home for information management and technology services providers like Smart Systems. It ensures that the privacy rights of Ontarians are adequately protected while personal information is collected, transmitted, stored or exchanged through an information infrastructure.

For the committee's convenience, we have taken the liberty of drafting some language, adapted from Bill 159, which covers our proposed amendment to Bill 31. You will find that language in appendix A to our written submission.

Moving on to our second proposed amendment, we note that the bill imports much of the language of the

Health Cards and Numbers Control Act, 1991, into section 33. The proposed legislation links the health number directly to an insured person within the meaning of the Health Insurance Act. This essentially limits the use of the health number to only those people who are insured by OHIP. This has been recognized by the Ministry of Health and Long-Term Care and the broader health sector, including the OMA and OHA, as an impediment to the automation of the health care system, since non-OHIP-eligible users of the system are not covered. For example, foreign visitors, members of the military and RCMP and inmates of federal penitentiaries cannot be given a health number. They must be given alternate numbers issued by each health care provider.

We strongly recommend that the proposed legislation be amended to allow the use of the health number by non-OHIP-eligible health care recipients. If this is not done now, it will be raised again in the near future, because this has been a continuous problem for the health care system. We'd be happy to work with the committee and the Ministry of Health and Long-Term Care to draft appropriate amendments to section 33.

In closing, we compliment the government for bringing this important bill forward and thank the committee for taking the time to listen to our remarks. We'd be happy to take any questions.

**The Vice-Chair:** Thank you very much. We'll start with Ms Martel.

**Ms Martel:** Thank you for being here today. I want to move directly to the amendment. I gather that it's not exactly as it appeared in Bill 159. You've made some additions or revisions to it, is that correct?

**Mr Seaton:** Some minor revisions, yes.

**Ms Martel:** Do you have any idea why this was taken out in this round?

**Mr Seaton:** No, we don't have any direct knowledge.

**Ms Martel:** Have you had any discussions with ministry staff about this? It's just kind of bizarre, in my opinion, that a provision that was in before has now been taken out.

**Mr Seaton:** We have had discussions with the ministry staff over the last couple of weeks, mentioning to them that we were interested in seeing this provision brought back in and also that we would be bringing it forward to the committee in our submission.

**Ms Martel:** And their reaction was?

**Mr Seaton:** They seemed prepared to listen.

**Ms Martel:** So it may just have been an oversight in terms of the drafting of this one.

The second one I'm not as clear on, in terms of use of OHIP numbers. Would that be something that's common in the privacy legislation in Manitoba, Saskatchewan and Alberta? Is that where you're drawing that from, or is it more to try to resolve an ongoing problem?

**Mr Seaton:** It's more to resolve an ongoing problem. It has been a problem with the Health Cards and Numbers Control Act. I suspect—and I can't recall directly how these are applied in the western legislation, but certainly this piece of legislation—that the Health



Cards and Numbers Control Act was imported directly into the act.

**Ms Martel:** You're just not sure whether or not there are some sort of provisions in the other privacy acts in the other provinces.

**Mr Seaton:** That's correct.

**Mr Jeff Leal (Peterborough):** As a new MPP, I wonder if you could just explain to me the Smart Systems for Health Agency—what you do, what your role is and how you're vitally connected to the delivery of health service in the province.

**Mr Greve:** The Smart Systems for Health Agency, as was indicated, is an agency of the government of Ontario. In essence, it is the infrastructure. If you think about the cables that connect hospitals, pharmacies, all of the health care providers, we are the infrastructure so that all of that information can be shared among the health care people who, in actual fact, need that information.

Think about it this way: If you were a patient in your hometown and you happened to be sick wherever it is in this province, your information should be available to that particular emergency department or that hospital without their having to do your tests all over again.

Smart Systems is the infrastructure that connects all of this patient information across the province in a secure fashion and makes it available to somebody who, first, has the ability to use it and, second, has the codes and is a physician or has a particular way of getting into the system to find that information—all the emergency departments, hospitals and things of this nature—so as to make that information available across Ontario and reduce duplication.

**Mrs Maria Van Bommel (Lambton-Kent-Middlesex):** Are all hospitals, pharmacies and doctors across the province connected to you, rural and northern as well?

**Mr Greve:** I'll let Michael answer the specifics of that.

**Mr Michael Connolly:** My name is Mike Connolly. We are in the process of connecting all of the hospitals. About 85% of the hospitals in the province are connected at the moment, all of the CCACs, all of the public health units. We are in the process of connecting laboratories, pharmacies and doctors, and that will happen over the next couple of years. We have been connecting people on an as-required basis. If they're capable of using the system, then we've been connecting them at that time. Many places can't use it yet. Effectively, the result will be in two to three years that all health care providers will be on one common secure network, and there will be an electronic health record for an individual—voluntary; they can sign up for this if they want—and then that would follow them around as they move from health care provider to health care provider in the province.

1420

**Mrs Van Bommel:** Do you deal only in health care records, or do you have things such as PACS and tele-radiology and those types of endeavours?

**Mr Connolly:** Yes, PACS, tele-radiology, tele-homecare, all that stuff is involved in it, so anything to do

with health care in the province. For instance, we have in Ontario now the largest tele-health application in North America. It's all connected on our network. So if you're in Timmins, you can have a consult with a doctor in Sunnybrook, for instance.

**Mrs Witmer:** Thank you very much for your presentation. I guess the first thing is that I'd go back to where Ms Martel started. I'm just a little perplexed that the role of the information manager, which was defined in Bill 159, has been removed. Seeing that it's also being used in Manitoba, Saskatchewan and Alberta, others obviously have recognized the need for that role. You have no further explanation, I guess, other than what you've already provided as to why it would have been removed.

**Mr Seaton:** That's correct.

**Mrs Witmer:** Those that have that definition in the other jurisdictions, would they have roles that are very similar to yours?

**Mr Seaton:** As a matter of fact, yes. Alberta and Saskatchewan both have smart systems like Agency. In Alberta, it's called Wellnet; in Saskatchewan, it's called the Saskatchewan Health Information Network. They very clearly have made use of that particular role definition in their legislation.

**Mrs Witmer:** Hopefully, then, it is an oversight and that can be corrected.

I'm not quite clear as to why you think it's so important that everybody have a number.

**Mr Connolly:** In order to electronically track a patient so that they can move from one part of the health sector to another and be treated, we have to be able to identify them. To identify them, we need a number. From a purely administrative point of view, they can't be typing in their name and address and all that sort of stuff over and over again. For most of the patients in the province, we've used a health number. However, between 2% and 5% of health services are received by people who do not have a health number, because the current health numbers act links health number with OHIP eligibility. So there are quite a few people—I mean, we're talking hundreds of thousands of people—who do not have a number. As a result, we've developed literally dozens and dozens of numbering systems across the province. It's very difficult to connect these.

Just so you know, there's an e-health council in Ontario that's made up of the major players, the OHA, the OMA and the OACCAC. Their number one e-health priority is to get the current health number used as a unique personal identifier for health care in the province. That's basically what we're recommending here. We're bringing that recommendation forward from those health care providers.

**Mrs Witmer:** So how would those people who don't have a health number now get access to one—the foreign visitors and the federal penitentiaries?

**Mr Connolly:** Let's say that I'm from the States and I end up in the hospital at the University Health Network. They would ask, "Do you have an OHIP number?"

They'd say, "No." As they registered that person, they would then have a set of unused OHIP numbers, or health numbers, and they'd allocate one of those numbers to that person. Then that number could follow them as they move through the health system while they are in Ontario.

**The Vice-Chair:** Thank you very much for your presentation.

#### JUSTICE FOR CHILDREN AND YOUTH

**The Vice-Chair:** Next we have Justice for Children and Youth. They were slotted for 2:40, but they kindly agreed to move up.

*Interjection.*

**The Vice-Chair:** They're not here, actually; they are running late.

**Ms Martha Mackinnon:** I'm Martha Mackinnon, executive director of Justice for Children and Youth. The first thing I would like to say is a tentative apology. I haven't actually looked at my written document in the last two and a half hours because the power was out for many blocks surrounding my office. It was only at the very last second that the power came back on, and I just pushed "Print" and ran. If there are any typos or ambiguities, please ask me about them, and I apologize in advance.

Secondly, I'd like to thank you for the opportunity to be here today. Similar to the speakers who spoke to you immediately before me, I would like to praise the Legislature for this legislation, even its name. The fact that Ontario has acknowledged the importance of the privacy of health information, to tackle what appears to be a daunting task by both the length and the complexity of the legislation, is enormously laudable.

My organization represents young people under 18, so, as opposed to the administrator and health care provider perspective which you just listened to, the perspective of Justice for Children and Youth is: What does it feel like to be an underage consumer of the health care system and what does it feel like to have your privacy rights determined by legislation and external or other people? That's the perspective that I hope to bring to you today.

From that perspective, again, the first thing I would like to say is that I laud this legislation for reinforcing the notion that in Ontario people can access health care when they have the capacity to do so. We don't have a magic age. We have sort of presumptions. We have ways in which we question whether a person might be capable or not capable. But at the end of the day, if a kid—I think back to when measles immunization was a large Ontario program and these needles were given to every grade 7 kid in the province. The consent forms for this particular piece of health care were delivered home through kids to their parents. I don't know whether some of them got lost on the way home, in the home, or on the way back, but you can imagine that not every piece of paper was returned one way or another. Public health officials

thought long and hard about that and decided that basically, most kids actually do know—school-age kids at any rate—what a needle is, what it's for, what it does, that it will hurt to a certain extent. They felt at that time that they could presume that a child of 10 had the capacity to consent. So that was a working age that public health officials in Ontario worked with on that particular program.

Again, I'm not suggesting that any arbitrary age is right. I'm only praising the government for acknowledging that it's a capacity test. If any young person is able to understand what it is that they are being asked about, or understand what it would mean to have a particular health treatment, and they are able to be voluntary about their choice as to whether to have it or not, Ontario recognizes the right of that young person to access health care. So we do have underage persons—ie, under 16 years old—who are able to consent to having stitches when they've been injured in a playground and there isn't a parent around.

#### 1430

As I said, I would praise the fact that this legislation reinforces and confirms those existing rights elsewhere and suggests that young people also can determine how their health information will be handled, if they have the capacity to make that decision. For example, if they have been found to be capable of deciding whether or not to get stitches, then they also can be capable of deciding who should find out about it and can, in appropriate circumstances, decide that they don't want their parents or their substitute decision-maker to know. That's consistent with the fact that they can have the stitches without their parents knowing.

Given that I believe this legislation intends to work with and not create a totally different set of rights from the young person's ability to access health care itself, there are one or two concerns with gaps in that ability to make both the information side and the health care side itself mesh. I'm going to address, in that area, particularly section 23 of the legislation.

Section 23 points out that young people are allowed to veto the rights of some other substitute decision-maker to get access to information if they have already been found capable of accessing the health care treatment itself or they've been found capable of and have already participated in counselling under the Child and Family Services Act. Our concern with that is that it leaves a gap. What if the young person hasn't yet had counselling but has sought information about counselling? The example in my written submission, of course, is the contentious one. What if the young person arrives at the doctor's door and says, "I'm pregnant. What are my options?" They may be able to exercise any one of those options independently of their parental or substitute decision-maker's views, but I would be concerned that this legislation does not allow them to control the fact that they asked for the simple information. So our submission would be that section 23 should make it clear that it encompasses everything to do with health care



information, not simply treatment or counselling that's already been participated in.

The second submission relating to section 23 I guess relates to the vulnerability of young people. A right to veto someone else's access to your own information is only a meaningful right if you know about it. What this legislation does not do is impose any duty on the health care provider to say, "Look, you have the right to keep this confidential. Do you want it to be or not?" Young people tend to assume that they have almost no rights unless they're told about them. So if the intent is to make sure that young people feel they can trust the health care system and access health information as well as counselling and treatment, then they need to be informed of any rights to privacy that they have within that system.

A second area of concern for Justice for Children and Youth relates to section 39, and particularly at this point subsection (2). Subsection 39(2) allows the disclosure of health care information to custodial institutions, penal or detention centres. Young people who are in detention are as capable of deciding whether disclosing or having their health information shared is in their best interests, whether they're in custody or not. In fact, sometimes in custody, as you can imagine, they're more vulnerable. I cannot imagine the young person who would think it was in his or her best interests to have the fact that they are taking drug treatment because they believe they are transgendered disclosed to a detention centre, particularly if the young person is in overnight—hasn't got bail, hasn't been found guilty of anything and doesn't need treatment in the facility. Section 39 doesn't limit the disclosure of health information to custodial facilities where it is necessary in order to provide treatment or in order to ensure the safety or health of the young person; it just says it can be disclosed.

There are many examples, and I'm sure you can think of them as well as I can, but information about HIV status can subject young people to particular bullying, stigmatizing and maltreatment in custodial facilities. Information gets out in custodial facilities. You will already know that there is an inquest into the death of a young person at TYAC, the Toronto Youth Assessment Centre, which is ongoing as we speak. With all the best will in the world, detention centres are closed communities, and once information is there, it is extremely hard, if not impossible, to keep it from becoming better known in the community. I can't see the public good that is served by allowing any disclosure, and I can see harm if disclosure is routine. In our submission, the disclosure ought to be limited to where it's necessary or with consent of the young person, because if the young person wants access to, for example, a medication for a mental health problem, they know they want the access. They'll be willing to consent to the disclosure. If they're able to consent, as I said, to the health care itself, then they will also have autonomous views about whether disclosure is helpful to them or not helpful to them.

I'd like, then, to move to a particularly vulnerable class of young people, and that's young people who are

in the care of a children's aid society. There are two sections, really, but section 42 provides that disclosure of health information can be made to a children's aid society so that it can carry out its statutory functions. There are no limits as to why such a disclosure might be made and whether it's necessary. For example, under the Child and Family Services Act, a child of seven has the capacity to consent or to refuse consent to being adopted but can't control the confidentiality of the health information on which that decision might turn. Again, I assume that a young person who wants to be adopted will know that adoption is more likely if disclosure is made. They already have the legal power to say, "No, I don't want to be adopted." Well, if they can say that but can't say they don't want information collected or disclosed, to me that is inconsistent.

Second, children in the care of CAS, in our submission, should not have fewer rights than kids who live with their parents. So just because a child was found to be in need of protection—that is to say, their parents weren't adequately protecting them—it shouldn't mean they lose the ability to say, "No, I don't want this health information shared with my state parent, the children's aid society." They shouldn't have fewer rights just because they've been found to be in need of protection.

Third, as I indicated, the legislation provides disclosure so that a children's aid society can carry out its statutory functions; not its duties, not just when it is required to investigate child abuse, but any statutory function. That, in our submission, is overbroad. A CAS is required to be a corporation. They must have board of directors' meetings. Does that mean you can disclose health information about a child because it would entertain the board of directors? Children's aid societies offer parenting courses. Is it necessary to disclose the health information of an individual child because a CAS wishes to provide a service for a parent?

In our submission and to sum all that up, the powers with respect to a CAS are overbroad, but more importantly, with respect to a children's aid society, they're uncertain.

#### 1440

It is not clear who is covered. It is clear somehow that members of the college of social work are in some circumstances subject to the act. What about social workers who don't belong to the college, or all the other workers who behave very much like social workers but are not members of the college and who work with a young person or the young person's family and know a great deal about that person's health information?

Though the act goes back and defines several layers of health care information custodians and health care providers, at the end of the day it doesn't define health. So what is protected from the privacy perspective and allowed to be shared from the facilitation of consistent health care perspective is unclear when it applies to a children's aid society. It would be our submission that not only would kids like to be very sure of who's covered by the act but so would CAS workers.



I find the act complex enough in the way it refers to numerous other pieces of legislation that, even if I'm a lawyer and was supposed to be reading it over the last week or so, if I found parts of it confusing, then a worker with a hundred-family caseload is unlikely to be able to take the time to think it out as thoroughly, or not thoroughly, as I have managed to.

Another section that relates to overbreadth that I would like to address the committee's attention to is section 35—it's on page 6 of my written submission. I'm using this section as just an example of potential problems within the bill. Sections 35 and 36 effectively authorize indirect collection and use of information if the organization that's doing the collecting is also subject to either FIPPA or MFIPPA or other privacy legislation.

If, for example, the other privacy legislation says that information can only be collected directly and this legislation says it can be collected indirectly, does the person have to collect it directly or not? Has the standard been lowered or not? As I said, this is an example, but it struck me as I read all the references to other pieces of legislation that it wasn't always clear, where there was an inconsistency, which one wins. What prevails? What are the dominant principles that will govern if there are inconsistencies?

Next—and I've actually talked about this to someone else, because I don't know whether what I'm reading is an error, some type of typographical error, or whether it's accurate. Section 58 of the legislation authorizes an entry and inspection by the commissioner, and it looks a lot like the kinds of standards one would need if one were entering on to somebody else's premises where they would have a warrant; in fact, it requires a warrant if it's a dwelling. So it looks a lot like the inspection provisions in the Human Rights Code or various other places that give compliance provisions. But what it indicates in 58(1)(c) is that the commissioner can come in and inspect when "the inspector does not have reasonable grounds to believe that a person has committed an offence." I would have thought it meant they could come in when they do think someone has committed an offence. Apparently, if they do think there has been an offence, they wouldn't be able to come in. So I'm hoping that's a typo. If not, then I'm puzzled. I'll just leave that one there, because I don't understand it if it means what it says.

There are two other areas of overbreadth, and I'll do these really quickly.

Subsection 39(1) is a section that in my view is overbroad. It allows disclosure if the disclosure is necessary "for the purpose of eliminating or reducing a significant risk of bodily harm to a person or group of persons." Is eliminating or reducing by 1%—if the risk is 99% and it would reduce the risk to 98%—sufficient to violate a privacy right? If it's to reduce a "significant risk," is a risk significant if it's 10%, 20%? These are all quite subjective terms and open to erratic, inconsistent and subjective interpretation. In our submission, it's therefore critical that this be tightened up and made more clear. In fact, I would suggest that disclosure of personal

information should only happen if the threat of harm is imminent and if it is clear that disclosure would eliminate the risk.

One final comment, and it's on section 72, which appears to say that decisions of the minister or cabinet—this is the giving notice and consulting part of the act. Again, I want to say that it's laudable; it's superb that this legislation includes that as a provision. Health care is terribly complex, and I and the speakers before me come at it from such different perspectives, so I think the consultation part is critical. However, what the section says is that the minister's decisions are immune from any review. I, as a lawyer, have never seen such a section in any legislation. I would submit that it ought to say the minister's decision is final and binding, and not go further.

**The Vice-Chair:** There is no time for questions, but thank you very much for your presentation.

#### COALITION OF FAMILY PHYSICIANS OF ONTARIO

**The Vice-Chair:** Next we have the Coalition of Family Physicians of Ontario.

**Dr Douglas Mark:** Good afternoon. My name is Dr Douglas Mark, and it is my privilege to serve as president of the Coalition of Family Physicians of Ontario. Dr John Tracey and I are grateful to have this opportunity to share our concerns with you.

Before that, I would like to tell you a bit about the Coalition of Family Physicians of Ontario. Founded in July 1996, the Coalition of Family Physicians of Ontario is a voluntary, member-driven grassroots organization representing over 3,600 family physicians, and growing. It is dedicated to protecting the rights and independence of family physicians across the province. We advocate, on behalf of our patients and members, solutions to improve our health care system and health care delivery to the people of Ontario.

Family physicians—all physicians, for that matter—are acutely aware about the protection of health information. We are our patients' health information custodians, and we uphold patient confidentiality. When becoming full-fledged physicians, we take the Hippocratic oath to pledge our commitment to this paramount principle. Consequently, we generally do support protecting health information, but we have serious concerns pertaining to your legislative proposals about how these changes may affect the already challenging health care environment. Our patients and physicians are aging, health care resources are increasingly rationed and the physician pool is dropping.

To present to you our main concerns, I wish to introduce to you the chair of the coalition's political action committee, Dr John Tracey.

1450

**Dr John Tracey:** We thank the committee for providing to us the opportunity to speak today. We believe the committee is aware that the health information of our



patients and its privacy are sacrosanct. Physicians diligently follow the policies and procedures currently set out by our regulatory and licensing bodies to protect information, as has been our tradition.

Last year we presented to government our version of a comprehensive care funding model in Ontario, entitled Primary Medical Care Enhancement Initiative: Ensuring the Future, which we believe contributed significantly to the creation of family health groups, a small step in the right direction to restore comprehensive family medicine. We submitted this solution to address the untenable situation that one million Ontario residents do not have a family physician.

This situation is not due solely to a shortage of family physicians; it is also due to the rejection of traditional comprehensive care by medical students and family physicians. Inadequate compensation, administrative costs and inability to access resources make this form of practice ever more burdensome and unrewarding. We believe the increased economic costs, increased administrative duties and severe penalties that await family physicians with the introduction and implementation of Bill 31 will further erode family physician human resources.

Family physicians have assumed the role of keepers and case managers of the master patient record. This now extends to receiving and being responsible for information sent from third parties and other caregivers to whom the family physician has not referred the patient, nor ever did. Vast amounts of information are exchanged daily with specialists and nurses to facilitate ongoing care in the workplace and to the WSIB, or to the legal profession, to insurance companies, to pharmacies and/or to the ministry.

While we can try to put in place policies and procedures within our own offices, we cannot ensure the confidentiality of patient information when it arrives, for example, on a clerk's desk in a patient's workplace. Even with the caution and discretion used by most family physicians, the potential for inadvertent breach of this bill is apparent. The circumstances of breaches will have to be established by case and tort law. While this is taking place, family physicians potentially face \$50,000 fines and massive disruptions to their personal lives and practice, a daunting reality that many will weigh seriously.

The Canadian Medical Protective Association, CMPA, has not commented on whether physicians carry insurance for fines levied for breaches. Instead, they seem to be waiting for Bill 31 to become law and then assessing this on a case-by-case basis. We have written to them asking for their response on this matter. In addition, we have written similar letters to the College of Physicians and Surgeons of Ontario and the OMA and look forward to their replies as well. We're not sure, therefore, whether or not we have insurance, and probably will not be able to get insurance to cover us for these fines that are going to be imposed. For family physicians, this is almost a repeat of the risks inherent in the scenario where we await interpretive law concerning the medical review

committee of the physician governing body called the College of Physicians and Surgeons of Ontario. This measure has in some instances been very disruptive to a lot of physicians.

There may be a liability imposed on physicians for the conduct of their employees, called vicarious liability, that further adds to the onus of compliance, leaving personal assets open to loss should physicians not obtain adequate insurance, if it is available at all.

Many Ontario family physicians are currently contemplating options available under the auspices of primary care reform, which ask that they form networks between their offices in order to share and access patient information. This, in all likelihood, will involve the establishment of a secure intranet, a substantial economic undertaking for participating physicians. The economic incentives to form networks have been inadequate. These physicians, in order to comply with Bill 31, have to be compliant with an additional unfunded expense.

In the same way that large corporations with a large staff complement are asked to comply with this bill, single and group practitioners are required, in a manner that is practical in the circumstances, to make available to the public a written policy and procedure that provides a general description of the custodian's information practices; describes how to contact (1) the contact person described in subsection 15(3), if the custodian has one, or (2) the custodian, if the custodian does not have that contact person; describes how an individual may obtain access to or request correction of a record and personal health information about the individual that is in the custody or control of the custodian and make it available within 30 days; describes how to make a complaint to the custodian and to the commissioner under this act; requires full knowledge of any substitute decision-maker to ensure that information is not disclosed to the wrong person—often physicians are not aware in an emergency situation if such a substitute decision-maker exists; obtains express consent where appropriate; complies with complaints; permits access to the office for the purpose of inspection without warrant or court order; understands that breach of law could result in a \$50,000 fine; requires that the physician continues to be the custodian of the record even after retirement or illness until he can find a suitably qualified custodian to take over the records—good luck in Wawa; imposes, upon the death of the practitioner, a requirement that the trustee of the practitioner's estate or the person administering the estate is deemed to have assumed custodianship of the records—even after death we continue to be the custodian of the records.

Mr Chairman, with all due respect, are these two conditions taking the concept custodianship of the patient records somewhat to the extreme?

We believe that the imposition of this bill, without amendments, will inevitably place impediments in the path of prompt medical care and cause significant expense to family physicians. We believe that this bill will increase economic pressure upon family physicians



to abandon their traditional role as case managers and custodians of the comprehensive medical record. This will lead, inexorably, to fewer medical students choosing family medicine and more family physicians taking up a walk-in style of practice or other alternative methods of practice.

**Dr Mark:** Thank you, Dr Tracey. In summary, the Coalition of Family Physicians of Ontario believes that the proposed legislation in this act is open to interpretation and leaves our members exposed to potential inadvertent risk. It places yet another burden upon the family physician profession, which is already in crisis, but also is open to interpretation and leaves our members exposed to potential inadvertent risk. This is why we believe it was imperative to appear today and discuss the potential impact Bill 31 could have on family physicians and the people they care for in Ontario.

We anticipate that amendments will be made to this bill as circumstances arise and would recommend the formation of an advisory committee that would also include representation from various bodies of "care custodian," and specifically representation from the Coalition of Family Physicians of Ontario.

**Mr Fonseca:** I would like to thank the Coalition of Family Physicians of Ontario for presenting for us today. In regard to education, if we can do something around education efforts done by the Privacy Commissioner or the Ministry of Health and the Ontario Medical Association, would this help alleviate some of the concerns that you brought up?

**Dr Tracey:** Education is always a good point, but the reality is that we as family physicians, and being the custodian of the master medical record—we will recognize that fact; that's what we do—receiving information from every which way and pouring that information out, stand as traffic cops in the centre of the busiest junction of patient information. As such, we are taking on the responsibility of this custodianship that has the potential for \$50,000 fines for inadvertent breach.

The question I ask you back is, when physicians now already are faced with tremendous burdens and all sorts of incentives to leave practice, when 40% of family physicians are over the age of 40 and contemplating alternatives, and we just heard today from the Ontario Medical Association that 26% of doctors are intending to leave the province, then, when we look at standing there in the middle of this information highway and looking at transferring the responsibility to a corporation and becoming a crossing guard instead, we think that a lot of physicians will weigh the alternatives to taking on this extra burden unless we find some way around it, a softer approach.

**Dr Mark:** Perhaps another way you can look at it is: Say, for instance, somebody invented fire before fire insurance were available for your house, your house burns down, and then you don't have insurance to cover that. We don't believe those mechanisms are in place to protect us.

To give you another example of what a patient might do, and hope I'm not stepping over anybody's boundaries

here: If a patient is not happy with something that is written in the file that they said at one of their visits, and they look at the record and say, "You know, I really did have more back pain at that visit after that car accident and you should put that down, because I think the back pain that started three months after, yadda, yadda," they can go on and on and say, "Really, my file should have that." I can just tell them, "No, that's not what happened. This is not what you told me. I didn't write that down." But this legislation now puts a whole new spin on things.

**Mr Fonseca:** Thank you.

**Dr Mark:** Actually, it's one in six doctors, John, it said there—

**Dr Tracey:** I stand corrected.

**Dr Mark:** —who are on the point of retiring or leaving Ontario.

**Mrs Witmer:** It's still too many.

1500

**Mr Yakabuski:** Exactly.

Thank you very much for your presentation and your humorous comment about Wawa. I come from rural Ontario and we have the same situation happening, where we're having a hard time attracting family physicians. When I talk to family physicians in my riding, one of the things they're saying is, "We become slaves to our practices"; not slaves to the part of the practice they love, which is working with patients, but to the administration of these practices today. That's why so many of them are trying to get into a multi-physician situation, but it's not that simple in rural communities to have practices like the Family Health Network and stuff like that. One of the things they're concerned about is more administration, and it sounds to me, from your point of view, that this act, particularly for family physicians, will do just that.

I guess what I'm asking is, are there some specific amendments you are going to be proposing to mitigate the effect, not only from the legal point but the administration point, and the burden of dealing with this additional legislation, which from what I can understand from your submission is going to take more and more time away from dealing with patients? The real problem in our system is that doctors don't have enough time to deal with patients because they are dealing with administration, and it sounds like this is going to add to that burden.

**Dr Tracey:** Thank you for your question. We would be delighted to be invited to sit down with the people who are proposing this legislation, to make amendments to it, to make it a softer approach toward family physicians. We have really serious concerns about the single practitioner in rural Ontario who may be facing extreme expense in trying to implement this and, more so, putting himself or herself in a position whereby an inadvertent breach, either through them or their staff, could result in a \$50,000 fine. If it's the intention of this legislative committee to put forward a committee for amendments, we would be delighted to serve on that, yes. Today, we wouldn't be able to present those amendments until such time as you have further discussion.



**Dr Mark:** May I offer some comments too? As it stands, each particular physician or group practice would have to put in place their own privacy rules or have their own privacy officer or consultant for each practice. That certainly would be a burden and troublesome, and I don't think many would be looking forward to that.

One other point I'd like to make: The Family Health Network is still a group-type practice, and if it is a comprehensive and secure type of model, whichever payment model it is, it still requires all the administrative headaches and paper forms. We're talking about walk-in clinics. You walk in, see the doctor and say to the walk-in clinic doctor, "Oh, by the way, I have a form to show you." "Sorry, we don't do that. Go see your family doctor," that kind of stuff.

**Mr Yakabuski:** That is certainly one of the concerns I am hearing over and over again from family physicians in my area, that they are just inundated with forms and it's taking them away from what they've been trained to do.

**Dr Mark:** And taking away from our family's personal time as well.

**Ms Martel:** Thank you for being here today. I'd like some clarification about what your requirements are now as family physicians under the federal legislation and what the differences are between what you are required to do now under the federal legislation and this bill. You would have had to do some things in anticipation of that legislation in any event, but it's not clear to me what you see as provisions that are more onerous or in addition to that legislation.

**Dr Mark:** Are you referring to the PIPEDA?

**Ms Martel:** Yes.

**Dr Tracey:** The federal legislation per se—I presume you're talking about PIPEDA.

**Ms Martel:** Yes.

**Dr Tracey:** PIPEDA is a piece of legislation, as I understand it, that is on the books to make sure that personal information of all types is protected. The Health Information Protection Act, which this is, has probably foreseen that PIPEDA can cause serious problems for us in terms of the transmission of data. For example, we're told that we can send a referral letter over the fax machine across an unsecured line. PIPEDA would not have allowed that. So this legislation, in the "circle of care," is allowing us to be able to conduct our businesses a little more freely but nonetheless has still put into place onerous requirements for us to be able to do our job. It's still not doctor-sensitive, if you see what I'm saying.

**Ms Martel:** I think so. I guess what is not clear in my head is, what are the additional burdens that you feel you are now facing as family physicians, above and beyond whatever obligations you would have to be meeting or are supposed to be meeting now under the federal legislation? It's not clear to me what those are.

**Dr Tracey:** The Ontario Medical Association and the CPSO have told us to continue to do what we've always been doing under the traditional role and rules, governed by our governing bodies that issue our licences under

PIPEDA. They haven't changed their decisions there as far as I can see.

**Ms Martel:** So there has been no change in your practice in terms of compliance with the federal legislation.

**Dr Tracey:** None whatsoever; not to this point.

**Ms Martel:** My other question had to do with—your last line said you thought that if this didn't change, you would see more family physicians taking a walk-in style of practice, a walk-in clinic. Is it clear in your review of the legislation that a physician in a walk-in clinic is not subject to the provisions of Bill 31?

**Dr Tracey:** The physician in the walk-in-clinic-style practice—as we call it, episodic encounter—is responsible for maintaining a record of that particular visit and any record that comes out as a result of that meeting with a patient. However, most walk-in-style practices are owned by corporations and often physicians working in walk-in-style practices are employees of the corporation. So in effect, if you look at the semantics of the situation, the corporation would be the custodian of the patient record. The physician would simply be providing the patient record to the corporation, and that again may lead to other discussion.

**Ms Martel:** So the obligation falls to the corporation.

**Dr Tracey:** Yes, in the same way, presumably, as it does in a hospital setting. While we would be responsible for the maintenance of confidentiality with respect to the content of that record, the actual record would be under the custodianship of the corporation in which the physician was providing the service, which is different from what happens in general practice.

**Dr Mark:** The other scenario we face in comprehensive medicine is that, say, a patient goes to a hospital, has an emergency visit or a consultation or a procedure done, and it's not even our initiative; that information would tend to go to the family physician. We are responsible for that information and have to then maintain that record appropriately. That's another aspect.

**The Vice-Chair:** Thank you very much for your presentation.

#### BAYCREST CENTRE FOR GERIATRIC CARE

**The Vice-Chair:** Next, we have the Baycrest Centre for Geriatric Care.

**Ms Paula Schipper:** Good afternoon. My name is Paula Schipper. I am the in-house legal counsel for the Baycrest Centre for Geriatric Care.

I'll just give you a little background about what Baycrest does. Baycrest is an academic health centre affiliated with the University of Toronto. We provide a range of services for the elderly. We're a charity. We operate a long-term-care facility, Baycrest Hospital, which provides chronic care, rehab and a host of other things like palliative care and psychiatric care. We have an extensive out-patient clinic for the elderly, with an adult day care centre for seniors, a community centre and



a host of other community programs, including health services provided in a person's home. In addition, Baycrest is home to both pure and applied research centres focused on aging. Baycrest's Rotman Research Institute is one of the top neuroscience research centres in the world and is on the threshold of major advances in the care and treatment of cognitive impairment.

We are a very large organization that provides virtually all our services from one campus. To facilitate the continuum of care that we provide, we have one centralized health records department. We're hoping this legislation won't require Baycrest to fragment into separate health information custodians. As it is, we work very efficiently and it would be very disruptive, needless to say.

Baycrest is committed to protecting the privacy of personal health information and is very pleased that Ontario legislation might finally pass—please. In late 2003, Baycrest adopted a centre-wide privacy code based on the Canadian Standards Association model code fair information practices.

**1510**

We'd like to comment that overall, Bill 31 is a great improvement over previous drafts of health privacy legislation. We're ecstatic that it's finally here. We were very upset at the prospect of only having to deal with PIPEDA in Ontario. But we do have some comments on Bill 31 that we hope you'll find constructive.

Mark Gryfe is the president of the Baycrest Centre Foundation. He was supposed to be with me today to present on fundraising, but unfortunately he is ill. I'll be brief and tell you our concerns about the fundraising provision in section 31.

Consistent with the views of the Ontario Hospital Association and the Ontario Council of Teaching Hospitals, Baycrest is concerned that the requirement to obtain express consent for fundraising is unworkable. We think that this will significantly undermine the ability of the Baycrest Centre Foundation to raise much-needed funds. It will have a direct impact on patient care and Baycrest's ability to meet its capital costs.

In anticipation of adopting Baycrest's privacy code, the foundation's fundraising practices were closely reviewed. We're satisfied that putting clients on notice through postings throughout our facility and in all of our communications is effective. Our notices describe our fundraising practices and provide clients with a convenient way to opt out of being solicited. This strikes an appropriate balance between protecting an individual's privacy interests and helping seniors through the funds we raise.

My next comment is going to be about subsections 25(6) and (7), which is the discretion of the public guardian and trustee to act as decision-maker of last resort. Under the bill, the public guardian and trustee may, but is not obliged to, be that decision-maker of last resort. Usually we would call on the public guardian and trustee for health care decisions if there is simply no other substitute available or in existence or if we've got

two substitutes who share responsibility and they can't agree.

Obviously, these provisions in Bill 31 were based on the Health Care Consent Act and it's unclear to us why it is mandatory for the public guardian and trustee to make decisions about treatment when there is no one else to make those decisions, and yet it's discretionary for them to do so under this bill. We ask that if the public guardian and trustee is not able to make those decisions, then could you please pick another person and oblige them to do it, such as the Information and Privacy Commissioner or even a designated officer from the health information custodian.

People are living longer, and many have cognitive impairment. Baycrest often must turn to the public guardian and trustee for health care decisions because an elderly client has no one else. We are concerned that health care will be stalled while we duplicate consultations and tests because there is no one to consent to the disclosure of valuable health information already learned elsewhere but unavailable.

The next issue I'd like to comment on is the lockbox on information disclosure, and I know you've heard quite a bit about it. We support the principle in the bill that health information custodians may disclose information only if it is reasonably necessary for the provision of health care. However, the so-called lockbox provision enabling a person to restrict the flow of necessary health information is a cause for concern.

At Baycrest, we serve a very frail at-risk population, where any lack of crucial information could result in catastrophic clinical outcomes. A person, for example, might direct that a previous history of mental disease such as depression not be communicated. That might lead to preventing the transmission of what would be critical information about their previous tolerance for medications or previously experienced side-effects which could be dangerous if unknown. It's also an issue for placement. Community care access centres collect information to determine whether seniors are eligible for long-term care and they disclose relevant personal health information to a facility if the person will be admitted. Our own staff determines what care level within our facility a person is suited for, and there's quite a range within just one long-term-care facility and within one chronic care hospital. We also determine if a person is eligible for placement in the hospital. Without full information we can't meet the person's needs, and that could lead to placement on a unit without the proper staff supports or physical facilities in place. We need to know, for example, if a person is at risk for wandering or has a history of physically lashing out. Otherwise, we could jeopardize the safety of that client, the safety of our other vulnerable clients and our staff. So there is a lot at stake.

Debt collection: I don't know if you've heard about this issue from anyone else. You may know that the federal privacy legislation, PIPEDA, has an express exception allowing a custodian of information to permit disclosure or to disclose "for the purpose of collecting a



debt owed by the individual to the organization.” Bill 31 does not contain a parallel provision, and general provisions permitting uses and disclosures, as well as provisions on use of information by agents, do not address the issue. Furthermore, there is the danger that people will expressly forbid information to be disclosed for purposes of debt collection, and we’ve had that experience in the past.

Long-term-care facilities in particular are prohibited from requesting financial information to determine if a facility resident can afford accommodation fees unless the resident is applying for a government-regulated rate reduction. Once a person is receiving care in a nursing home or home for the aged, they can’t be discharged for refusing to pay even if they have the financial means through Canada pension and old age security funds. Under the long-term-care legislation, the facility and the Ministry of Health and Long-Term Care—in other words, the Ontario taxpayer—have to foot the bill when a resident does not pay for their accommodation. Chasing down resident payment is time-consuming and costly, but it’s in the government’s interests to enable facilities to do it. We don’t like to do it. In our past, when we had more funds available, we were not that aggressive. Unfortunately, now we’ve had to be because funds are tight. We don’t have the administrative depth to go after it, so sometimes, as a last resort, we might turn to an outside person or a collection agency. Without an exception under Bill 31 for disclosures necessary for debt collection, long-term-care facilities and, I imagine, many hospitals will be out of tools to obtain payment and our operating budgets will be strained further.

The last point I’m going to mention today is about research, just briefly. Baycrest believes that the provisions concerning research in Bill 31 are a step in the right direction. Baycrest also strongly supports the representations made by the Ontario Council of Teaching Hospitals regarding research, and we refer you to their brief. I’m not sure if you’ve heard from them yet, but you will be.

That’s it. On behalf of Baycrest, thank you very much for letting us present today.

**Mrs Witmer:** Thank you very much for an excellent presentation. You’ve actually brought to our attention some points for consideration and amendment that we had not been made aware of before, so we really do appreciate it. We’ve certainly heard from others about the negative impact this bill could have on fundraising and the need nowadays, whether it’s an independent agency or a hospital, for fundraising to take place in long-term-care facilities. So we hope that when we make some amendments, there will be some changes made.

You took a look at the lockbox and the disclosure of information, and you mention something here that I think needs to be seriously considered, and that is the fact that if people don’t have access to all the medical information and history, unfortunately the health care professional could be and would be held responsible and liable. We’ve just heard from doctors how difficult this is any-

way, and it just makes their lives even more intolerable, and any other health care provider.

Would you speak about the public guardian and trustee? That’s a new point that we have not heard about before.

**Ms Schipper:** If you look in the section, it says the public guardian and trustee “may” make those decisions, and it’s “may make the decision” of last resort. That is, if there’s not power of attorney, no relative available or living, then the public guardian and trustee may make decisions concerning the transfers of information but they’re not obliged to. If you look at the wording in the Health Care Consent Act, where we’re used to seeing the public guardian and trustee act, they are obliged; it says “shall.” I would really hope that we change that because we can’t be left hanging.

**Mrs Witmer:** So are you suggesting it would simply need the change of that one word?

**Ms Schipper:** Yes.

**Mrs Witmer:** The “may” to “shall”?

**Ms Schipper:** That’s it.

**Mrs Witmer:** Thank you very much for, as I say, a really excellent presentation.

1520

**Ms Martel:** Two questions: The first is related to your concern raised on the first page, and then I see you do more that you didn’t refer to in your written marks about the ability to become a single health custodian. Are you concerned then, in what you have read, that somehow you would not get approval, or are you looking for a way that would be much easier to be automatically—in the same way as the public hospitals act?

**Ms Schipper:** Obviously, we would like it to be automatic. We would have to change the bill itself in order to be included because we’re not one entity operating on several campuses, which is the exception under the bill at the moment. We are several entities or several services from one campus, but we’re actually different corporations. We’re all under an umbrella.

We have a centralized service and we would really like to be a single health information custodian, and one of our concerns is the speed at which this bill is passing. I understand the pressure, especially because PIPEDA is now in force, but we’re concerned that the approval process won’t be ready for July 1. We want to have time to apply and know the answer so we can adjust, because if we’re denied, we have to completely upset the apple cart, just reorganize.

**Ms Martel:** There are a number of provisions, and I suspect that we need to have more of a discussion about how we do that. I thought there were provisions there that would facilitate that, but you’ve got a legitimate concern about the timing and how long the minister’s approval would take.

You also didn’t have a chance to refer to the second one, but we have heard from some of the regulated health professions their desire to be included in schedule B of the bill. Do you want to just—

**Ms Schipper:** I would love to. First of all, the Quality of Care Information Protection Act is so important, and

we're delighted that it's finally made it to legislation in Ontario. That kind of protection for quality improvement practice is already available in some other provinces. But it's kind of puzzling to us that long-term-care facilities aren't automatically included under the bill within the scope of that legislation, especially because we're required by statute to have quality improvement exercises. I wish I had the section with me, and I didn't quote it. So I don't understand why it wouldn't be automatic. Certainly, unfortunately, there is scope for error in long-term-care facilities, and we like to have an open environment where people feel safe to disclose problems so we can fix them.

**Mr Fonseca:** I'd like to thank you for being here with us today and presenting on behalf of Baycrest. I wanted to ask: Fundraising has been a hot topic. Many of the stakeholders have brought it up. We've discussed the opt-out process. What would you see as an opt-out process that would work for the stakeholder as well as for the person who's being solicited?

**Ms Schipper:** I think you've just got to provide notice everywhere and make sure people understand that we are active in fundraising—this is how we do it and what we'll do—and that you can opt out at any time, and then have an obligation to make it very easy for someone to remove their name from a mailing list and just not be approached again. It's sort of ironic, but if you require express consent for fundraising, when are you going to do that if you don't do it at the beginning, when somebody is there to apply for care? That's a little distasteful, because you don't want to make the implication that your care is contingent on the fact that you check off "yes," that we can solicit you for funds.

We like the idea of making it clear, with written material, that we're going to be active in fundraising. We don't want the health information. We're not going to use it. We're going to use just basic demographic information and give them the opportunity every time to say, "No, please don't approach me again."

**Mr Fonseca:** My colleague Kathleen Wynne has a further question.

**Ms Kathleen O. Wynne (Don Valley West):** You talked about the debt collection provision, or the lack thereof. Can you talk about what health information is necessary for debt collection?

**Ms Schipper:** It's not; it's just that when somebody applies for long-term care or chronic care, because that's where we can charge for accommodation fees, that's when we collect their name, address and everything else. But when I looked in the bill, I was concerned that anything related to health information could include that basic demographic information. I wasn't sure we would be free to remove that information in the context of the health record or whatever we've created.

**Ms Wynne:** You mean just the name of the person and the—

**Ms Schipper:** Just the name and address and the basic financial information that we've collected in order to allow payment.

**Ms Wynne:** That sounds like it's a clarification that we need to—

**Mr Fonseca:** Health information that's collected—

**Ms Wynne:** You're not talking about health. You're just talking about the information about the person.

**Ms Schipper:** Yes.

**Mr Fonseca:** This is only financial information.

**Ms Wynne:** OK.

**Ms Schipper:** Right. Obviously they would know it's the Baycrest Centre for Geriatric Care that is owed a debt, so that might be a bit of a tip-off, but nothing about the care they're receiving, just the basic demographic stuff.

**The Vice-Chair:** Thank you very much.

## ONTARIO PHARMACISTS' ASSOCIATION

**The Vice-Chair:** Our next presenter is the Ontario Pharmacists' Association.

**Ms Ruth Mallon:** Good afternoon, Mr Chairman and standing committee members. My name is Ruth Mallon and I am the vice-president of pharmacy services at the Ontario Pharmacists' Association. With me today is Christine Ling, pharmacy services coordinator at our association. Thank you for granting us an opportunity to make a submission to you today.

The Ontario Pharmacists' Association is a voluntary, not-for-profit professional association of pharmacists and pharmacy students. We have over 5,300 members across Ontario representing all areas of practice, including community pharmacies, hospitals and industry. Pharmacists are significant stakeholders in the health sector, and as primary care providers pharmacists have a particularly strong interest in Bill 31.

Pharmacists uphold patient confidentiality to the highest degree. In poll after poll, pharmacists are rated the most trusted of professionals. We want to maintain that high level of trust we have earned from our patients.

In this regard, the OPA supports Bill 31 and the establishment of clear rules respecting the privacy of personal health information. We recognize that the rights of patients to protect their health information must be balanced with access to personal health information for the purpose of providing health care, and we see Bill 31 as striking a good balance. We are pleased that Ontario has proposed privacy legislation specific to health information, given the unique information requirements of the health care sector.

The information practices of pharmacists derive from the scope of practice, which is broader than is generally recognized. Pharmacists do much more than simply dispense medications. Pharmacy practice includes interviewing patients; counselling patients about their medication and any recognized side effects, drug interactions or allergies with other prescription drugs, medicines or herbal products; and checking the prescription against the patient's medical history and current medication program for drug interactions, known allergies, appropriateness and correct dosage. In addition, pharmacists provide



primary care, including performing detailed reviews of patients' medication profiles, working with physicians to manage medication regimes, and monitoring patient responses to and the outcomes of their medication.

Given the demographics of our society and other factors, pharmacists are likely to become much more fully integrated into health care provision, including working more closely with physicians and other health care providers within primary care networks. The changing role of pharmacists within the health care system may necessitate changes to the personal health information practices of pharmacists, but what is certain is that accurate information, provided by the patient or by the patient's caregivers or substitute decision-makers, is and will continue to be essential to the provision of quality health care by pharmacists.

Although Bill 31 will facilitate the provision of health care by pharmacists in many ways, there are a small number of provisions in Bill 31 that the OPA is concerned will hamper the ability of pharmacists to provide health care to patients at the accepted standards of practice. Recognizing that the full scope of pharmacy practice may not be widely known, the OPA would like to raise three issues with the standing committee. These issues involve obtaining consent to the disclosure of personal health information to health benefits providers other than OHIP, clarifying the definition of "personal health information" and clarifying the definition of "marketing."

Under Bill 31, pharmacists must obtain express consent to disclose personal health information to health benefits providers. The purpose of the disclosure is to allow the patient to obtain his or her prescription without having to first pay for it and later be reimbursed by the benefits provider. Given the number of interactions that pharmacists have with patients each day, the requirement to obtain express consent will cause significant delays in filling prescriptions. Further, redirecting human resources so as to obtain express consent will severely detract from the time available for patient-pharmacist contact, such as therapeutic discussion and medication counselling.

1530

In Ontario, approximately 50% of all prescriptions are paid by the Ontario government, 40% by third parties such as private drug plans, and 10% directly out of pocket by patients. All Ontario government prescriptions and approximately 35% of private-payer prescriptions are reimbursed directly to the pharmacy through an electronic claims network. This direct payment model eliminates the need for the patient to pay for his or her prescription medication at the point of delivery, which is particularly important to the elderly and others living on fixed incomes. The OPA fully endorses the need for patients to be given notice of this disclosure of their personal health information to health benefits providers. After such notice is given, the OPA submits that pharmacists should be entitled to imply the consent of the patient to the disclosure of personal health information to the benefits provider. This position is consistent with clause

38(1)(a) of Bill 31, which permits the disclosure of personal health information for the purpose of verifying the eligibility of an individual to receive health care or benefits funded by the government of Ontario.

The second point is under the definition of patient health information. The definition in Bill 31 includes "identifying information about an individual ... if the information identifies a provider of health care to the individual...." Under the law governing the practice of pharmacy, pharmacists are required to identify themselves on the prescription or in the patient's health record. As such, the OPA is requesting clarification of the circumstances under which a pharmacist's personal information in a patient's health record can be said to be identifying information about the patient. Such clarification will assist pharmacists in implementing Bill 31.

Our third and final point is around marketing. Our information that the scope of pharmacy practice is generally believed to be narrower than it is suggests that certain pharmacy programs may be interpreted as marketing activities rather than health care activities. Compliance programs, which involve pharmacists contacting patients who have failed to renew prescriptions, particularly prescriptions required for serious ailments or ongoing conditions, are an example in point. Wellness programs, which involve educating patients about the management of their disease or condition, are also susceptible to being interpreted as promotional activities rather than health care services. Surveys have demonstrated that these programs are effective in improving the health care of patients, particularly those apt to forget or neglect their medication regimes. The OPA respectfully requests the clarification of the definition of marketing in Bill 31 so as to expressly recognize that compliance and wellness programs provide or assist in the provision of health care.

In conclusion, we congratulate Ontario on the introduction of Bill 31 and hope that once it is in force, an order will be sought from the Lieutenant Governor in Council deeming it substantially similar to the Personal Information Protection and Electronic Documents Act.

**Ms Martel:** Thank you for being here. I would like to go back to your first concern, which has to do with express consent to disclose personal information to health providers. I'm looking at clause 38(1)(a) that you've referenced, which I see could at least cover people who are covered under the drug benefit plan but clearly would not, I suspect, for people who are covered by private insurers.

**Ms Mallon:** Right.

**Ms Martel:** How would you see that section being amended to cover that category of people who are dealing directly with private insurers?

**Ms Mallon:** We were thinking you could make it as we have done for PIPEDA, in the notice to our patients that information would be shared with their health benefits providers or third party payers for the purpose strictly of getting reimbursed for their medication. So once they

have been given notice, that would be sufficient for these purposes.

**Ms Martel:** That's what you've done under the federal legislation and that has been sufficient under that legislation?

**Ms Mallon:** It hasn't been challenged.

It's because the definition of a health information custodian is very clear in this legislation, and a pharmacy benefits manager or a third party payer would not be a health information custodian. Therefore, it's asking for express consent, which would mean finding the person, making sure they're knowledgeable and making sure they give consent, rather than putting it in a notice.

**Mr Fonseca:** Thank you very much for your presentation. I wanted to ask about the serious delays you brought up in terms of the consent issue.

**Ms Mallon:** The delays in the consent are around a third party payer, which we were just talking about with Ms Martel. You've got a busy pharmacy. People often don't come in with their prescriptions. They often send their next-door neighbour or a friend or somebody and they send the prescription in. It would be impossible to get express consent from that sort of person; we would have to get in contact with the person directly. That may not be possible; they may be sick, they may be unable to talk, all that sort of thing. That would definitely cause a delay. I can imagine somebody coming home from the hospital with a Tylenol 3 prescription and their husband bringing it in, you can't get consent from the husband, so—

**Mr Fonseca:** Do you know what percentage of your customers would fall into that category?

**Ms Mallon:** As I said, most of the time it's 50% ODB, 40% third party. Of that 40%, around 35% and growing numbers are electronically adjudicated, so the patient doesn't pay; I'd have to transmit that information. So a significant number, and of course the number of prescriptions is rising every year too.

**Mrs Witmer:** Thank you very much for your presentation. It certainly is very much appreciated. It's interesting to see how this bill could possibly have some negative consequences for the pharmaceutical providers, the pharmacists. On the whole issue of disclosure, what would you then recommend that the government do with this legislation in order to continue to allow for these prescriptions to be reimbursed through the electronic claims network?

**Ms Mallon:** For PIPEDA, we have information for the patient that defines that this information will be sent off to their pharmacy benefits provider. That notice should be sufficient to assume implied consent when they actually use the drug card. In that case we would recommend that be part of the information that would be under—I don't know the exact wording—providing the care and the payment for the care. That would be part of

an implied consent, rather than an express consent. I haven't talked to a lawyer about this, but we may want to consider if that information is given to a non-health information custodian that rules around what they do with that information should perhaps be defined.

**Mr Yakabuski:** I'm just wondering how the Ontario Pharmacists' Association feels this legislation would work with them in regard to—you know, a pharmacy is not the secure kind of environment that a doctor's office is. You don't generally have privacy; it's in a retail business. When people bring in prescriptions, they're often set down over a counter, and if other people are in line, they can see those prescriptions. Certainly when they're filled and handed over another counter to the person receiving it, they're visible to anybody who may be in the vicinity of that exchange counter in the pharmacy, and as they take it up to the checkout as well. I'm just wondering whether under this bill that constitutes any kind of inadvertent disclosure, because many drugs can be clearly identified as drugs for a particular condition, by anybody who has any medical knowledge at all. They are fairly commonly linked with certain illnesses and the fact they're receiving the drug at all—I'm just wondering how that might impact pharmacists with regard to the disclosure provisions in the bill.

**Ms Mallon:** Personally, I would say that this bill does not change the situation as it is. The fact that PIPEDA came into effect January 1, 2004, obviously raised the level of awareness around privacy to consumers and pharmacists alike.

What the Ontario Pharmacists' Association did for our members was give them an audit checklist of how to go through your pharmacy, from walking in the front door to delivering the prescription to who has access to your records; how do you destroy those records; how do you keep your patient information confidential. That was one of the things we did to try to heighten awareness of that very important thing, keeping that kind of information private and confidential.

I have to say, from experience, it's very difficult to pull a patient away from a cash register and get them to actually go into a counselling room or a private room. Often they're very busy and in a hurry to go.

The other issue around privacy and confidentiality is around standards of practice, and the standards of practice are that we don't disclose that kind of information to anybody else. So this is no change from what our standards of practice have always been.

**The Vice-Chair:** Thank you for your presentation.

The next group that's on the list, the Empowerment Council, is not here. The clerk has checked; they didn't confirm and they're not here, so I would say the committee stands adjourned until 10 am tomorrow.

*The committee adjourned at 1541.*











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### **Also taking part / Autres participants et participantes**

Mr Jerry Ouellette (Oshawa PC)

Ms Kathleen Wynne (Don Valley West / -Ouest L)

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Mr Trevor Day

### **Staff /Personnel**

Ms Margaret Drent, research officer,  
Research and Information Services



# CONTENTS

Tuesday 27 January 2004

<b>Health Information Protection Act, 2003, Bill 31, Mr Smitherman /</b>	
<b>Loi de 2003 sur la protection des renseignements sur la santé,</b>	
projet de loi 31, <i>M. Smitherman</i> .....	G-55
Information and Privacy Commissioner of Ontario.....	G-55
Ms Ann Cavoukian	
Mr Ken Anderson	
Ontario Dental Hygienists' Association.....	G-59
Ms Sandra Lawlor	
Ms Margaret Carter	
Ontario Hospital Association .....	G-61
Ms Hilary Short	
Ms Elizabeth Carlton	
Mr Brian Keith	
Ontario Council of Teaching Hospitals.....	G-64
Ms Mary Catherine Lindberg	
Mr Ken Bednarek	
College of Physicians and Surgeons of Ontario .....	G-67
Dr Rocco Gerace	
Ms Katya Duvalko	
Federation of Health Regulatory Colleges .....	G-70
Ms Michelle Kennedy	
Ms Christina Langlois	
Mr Irwin Fefergrad	
Cancer Care Ontario .....	G-73
Dr Terrence Sullivan	
Ms Pamela Spencer	
Cardiac Care Network of Ontario.....	G-75
Dr Eric Cohen	
Ms Joyce Seto	
Ms Bonnie Freedman	
Association of Healthcare Philanthropy .....	G-78
Ms Pearl Veenema	
Ms Susan Mullin	
Smart Systems for Health Agency.....	G-81
Mr Allan Greve	
Mr Brendan Seaton	
Mr Michael Connolly	
Justice for Children and Youth .....	G-85
Ms Martha Mackinnon	
Coalition of Family Physicians of Ontario.....	G-87
Dr Douglas Mark	
Dr John Tracey	
Baycrest Centre for Geriatric Care .....	G-90
Ms Paula Schipper	
Ontario Pharmacists' Association.....	G-93
Ms Ruth Mallon	

ON  
G  
23



G-4

G-4

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## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 28 January 2004

# Journal des débats (Hansard)

Mercredi 28 janvier 2004

## Standing committee on general government

Health Information  
Protection Act, 2003

## Comité permanent des affaires gouvernementales

Loi de 2003 sur la protection  
des renseignements sur la santé



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 28 January 2004

Mercredi 28 janvier 2004

*The committee met at 1001 in room 151.*HEALTH INFORMATION  
PROTECTION ACT, 2003LOI DE 2003 SUR LA PROTECTION  
DES RENSEIGNEMENTS SUR LA SANTÉ

Consideration of Bill 31, An Act to enact and amend various Acts with respect to the protection of health information / Projet de loi 31, Loi édictant et modifiant diverses lois en ce qui a trait à la protection des renseignements sur la santé.

**The Vice-Chair (Mr Vic Dhillon):** Good morning, everybody. Welcome to the standing committee on general government for the hearings on Bill 31. Our first presenter—

**Ms Shelley Martel (Nickel Belt):** Chair, may I raise a point of order? I would like to raise something, and I apologize to the first presenters, from the auditor's office, whom I know very well. I wonder if I can deal with a matter with respect to the schedule for next week. There was a subcommittee meeting about this yesterday, but decisions were essentially not made, and I think they should be made, with respect to determining what the schedule is going to be and making the presenters aware of that.

I don't know how many committee members saw the final list last night for presenters, but the Soo has six in total, Kingston has four in total with one of those people who would go to London as well, and London has a full number. In the subcommittee meeting yesterday, there was a discussion—I'm not implying there was any consent, but there was a discussion about what we should do with those numbers and if it made sense to actually travel with the whole committee to some of these locations if the numbers were low or if it would make more sense cost-wise to actually invite people to participate via teleconference in two of the sites. I am asking the committee to think about in essence doing that in the case of Sault Ste Marie and Kingston.

I asked the clerk yesterday if he might prepare some costing so we would know what we were dealing with, specifically the cost for the charters to take us to the Soo and to Kingston, the hotel rooms; there are of course per diems for food for people; there of course would be costs associated with having the equipment that we would have to rent in the Soo and in Kingston to do the Hansard. So

he's got some of those, which I'd like him to share with the committee, and then I'd ask for some discussion among committee members about what to do.

Obviously, I don't have the full idea of the costs, but I think they're significant enough that it would make some sense for us to consider doing it by teleconferencing. In the Soo, for example, the most we would have hearings for is two hours. In the case of Kingston, the most we would have a hearing for would be one hour and 20 minutes. So, Trevor, if you wouldn't mind giving the committee an idea of the costs, I'd appreciate it.

**Clerk of the Committee (Mr Trevor Day):** For the charter for all three cities, rooms for 16 people—that's 10 committee members and six staff—and the meeting rooms in all three cities, the total was \$18,301.98. That doesn't take into account catering or some of the broadcast requirements as far as moving equipment.

If we were to do just London on an overnight, where the numbers seem large enough, had we gone the night before, Air Canada return, rooms for 16 people and the meeting room costs us \$10,002.08. If we did the same trip going VIA 1, for 16 people and the meeting room, it's \$5,532. If we did it as a day trip—London is fairly close—then we're looking at just the air travel and the meeting room, \$8,258.

**Mr Peter Kormos (Niagara Centre):** And by bus?

**Clerk of the Committee:** We haven't looked into the charter costs yet. We were unable to get them last night.

**Interjection:** Not a whole lot, though.

**Mr Kormos:** Speaking to this point of order, that's an incredible amount of money.

I'm told that when the subcommittee met yesterday, there were but two parties who wanted to make submissions in Sault Ste Marie, which suggests to me that there wasn't an overwhelming enthusiasm about participating in the committee process around this particular bill in Sault Ste Marie.

In Kingston, there was a total of five, one of whom was prepared to go to London, which leaves you with effectively four people. At 20 minutes a pop, that's 80 minutes or one hour and 20 minutes. Lord love a duck, Chair, travelling all the way to Kingston, with the associated cost, for what will amount to one hour and 20 minutes of hearings?

Let's talk about Sault Ste Marie. When there were but two participants, that would have meant 40 minutes—less than an hour of submissions. Far be it from me to



suggest that anybody scrambled, from the government caucus, the whip's office or the House leader's office, to beat the bushes to find some more participants for the Sault Ste Marie hearings. I wouldn't in any way suggest that that happened yesterday, although I've seen it happen on previous occasions, because it would be embarrassing to go all the way to Sault Ste Marie for but two people.

Sometimes the government and its members have an interest in travelling to a given community, especially with such a benign piece of legislation as this one appears to be. Notice I've been here a couple of times during the committee hearings and I haven't seen any outrage. I've heard submissions but I haven't seen anybody waving picket signs or any angry murmurings in the audience.

The reason why you travel about and go out with committees is to accommodate people. Also, let's understand that the participants in this process are all what I call professional participants. There are no Jane Doe/John Doe participants, no plain folk kind of participants. What that means, and why I raise that, is that these organizations like the Sault Area Hospital or the Children's Aid Society of Algoma up in Sault Ste Marie would not be overly discomfited by using, let's say, teleconferencing. The technology wouldn't be overwhelming to these people.

I'm saying to you, with respect to this point of order by Ms Martel, that it is pretty foolish on the part of a committee to incur those types of incredible expenses, to be spending taxpayers' money in such a way for, as I say in one instance, one hour and 20 minutes of hearings; even in Sault Ste Marie, now that the list has been expanded from two to, oh, my goodness, six, for but two hours, for 120 minutes. Good grief. You wait that long at the airport to get on your plane. Right? You understand what I'm saying? That's how long it takes you to get your plane, and boom, it's over. So you're talking about a whole lot of bucks here. We're talking in the context, at least so far as where I come from, of social assistance recipients and ODSP recipients who are still not seeing a penny increase in their allowances.

1010

I listened to Mr Sorbara on Monday morning talking about the formidable deficit that was going to force some considerable restraint on the part of the government and its expenditures. I would say to you, Chair, and to this committee, that it would be delinquent and out of order for this committee to be dropping 10 grand, 15 grand, 20 grand a pop to travel about when the interests of the parties who want to make presentations can be served by teleconferencing.

When we're in this climate of fiscal restraint, of tightening our belts, of telling public sector workers that they might have to wait for their fair share, for what's due them in terms of wage and salary increases, what an affront to people on ODSP, to people on social assistance, to our public sector workers who are going to be told that the cupboards are bare, for this committee to be

blowing money like drunken sailors—and I've got nothing against drunks or sailors; I don't want to hear from the SIU about that comment; it was made in the context of the historical reference—in a time of fiscal restraint, when the interests of these parties can be met with teleconferencing, with the technology that's available. Good grief. Are they a bunch of Luddites here? Let's use that technology and save the taxpayer some money, especially when the taxpayer is going to be told he's going to be faced with bigger user fees because there is no money in the till, because the government coffers are empty.

Ms Martel says, "Wrap up," and indeed I do.

**Mrs Elizabeth Witmer (Kitchener-Waterloo):** I don't often find myself agreeing with Mr Kormos, but on this occasion I think he has made some excellent points. In a time of fiscal restraint, and having seen yesterday that there was really limited interest in speaking to this bill, I think it would be quite irresponsible for us to travel when we have the opportunity to do it by video-conferencing.

**Mr Lorenzo Berardinetti (Scarborough Southwest):** I had the opportunity to sit and listen to the deputations that the people who came yesterday and on Monday made to this committee. They made excellent presentations. I think one of the purposes of this committee—I am new, and I always like to preface my first few months in this job by saying I'm new, that I don't have the experience of Mr Kormos or Mrs Witmer.

**Mr Kormos:** You're lucky you're not as old as I am either.

**Mr Berardinetti:** Well, yes. I'm going to have to ask where you get those boots, because I think I'd like to get a pair myself one day. But, anyway, that's a different story.

One thing I've learned very quickly in being elected to provincial government is that the interests of the province are different than the interests of simply the city of Toronto. Whether we be in caucus, in the Legislature or in a committee meeting like today, we can't be always Toronto-centred.

The minister came on Monday and spoke and indicated the importance of this bill and of having wide public consultation. He made that very clear. When I saw the agenda on Monday morning, it was made clear that this committee would travel to Kingston, London and Sault Ste Marie.

Yesterday, the issue arose that there weren't enough deputants in Sault Ste Marie and/or Kingston and that perhaps it could all be done in London. We're all for saving money, but one cannot talk out of both sides of one's mouth. If we want to be democratic, if we want to be an open and fair government, a government that listens, then we must be committed to going beyond the borders of Toronto, beyond north of Steeles or west of Highway 427 or east of the Pickering town line or the Scarborough border.

As a city of Toronto MPP, I would think the world gravitates around Toronto, but it does not. Clearly there



are people here who are from other parts of Ontario who want to be heard, and I think it is incumbent upon this committee to go and listen to these individuals and to also commit ourselves to hearing from individuals across this province.

With all due respect to the concerns raised by the previous two speakers, I will be supporting or at least, if it does come down to a vote, putting forward the schedule in front of us and requesting that this committee continue with its schedule to go to Kingston, to London and to Sault Ste Marie. I think the costs are justified. Some of the speakers listed here are from the Sault Ste Marie area, some are from the London area and some are from the Kingston area. One could argue we could put them on teleconferencing, but then once again more reason to hate Toronto. Why is everything done in Toronto? Why are we always centralized in Toronto? This is an opportunity for this government to show that we want to go beyond the borders of the city and to hear from people beyond Toronto. So I will be supporting the travel and the locations listed in front of us today.

**Ms Martel:** If I just might make a few points, because I was part of the subcommittee meeting and no one at the subcommittee meeting yesterday suggested that we do everything out of London. That's the first point. And no one suggested that we limit the public hearings in any way by accepting fewer deputants or making them travel to places that they didn't want to travel to in order to accommodate them. Rather, we are suggesting that we can certainly accommodate the participants, we can listen to the participants by videoconferencing and teleconferencing here on Tuesday in the case of the deputants from Sault Ste Marie and from Kingston. That was part of the proposal that was put forward, that we would use Tuesday, use this room, link into the group from the Soo in the morning, link into the group from Kingston in the afternoon, and then make the trip to London, because clearly there was going to be quite a large number, or perhaps a full house, in London.

I just think that it makes absolutely no sense, at a time when the government is telling everybody else to tighten their belts, that we would refuse to look at some alternative ways to have people participate. We're not talking about limiting their participation. We are talking about accommodating their participation in a different way, because frankly there hasn't been an enthusiastic response from people in the Soo and people in Kingston.

It's interesting to note that at noon yesterday we had two participants in Sault Ste Marie and by 5 o'clock the government House leader's office had managed to rustle up four more. I'm not saying they're not legitimate but it seems bizarre that, if people really wanted to participate, by 12 noon on the same day that we were supposed to have that list in we only had two. So it's clear somebody got on the phone in response to that and found some more people. But I think the way we can accommodate those people is a much cheaper way for the taxpayers. I see no benefit in spending the kind of money that we are proposing to spend to actually physically be in Sault Ste

Marie and in Kingston. I point out we can save even more costs by actually using some of the government buildings. For example, in Sault Ste Marie at Roberta Bondar Place there's probably a board room at the Ministry of Northern Development and Mines which would accommodate the two hours of hearings that we're going to have, and I suspect we could do the same in Kingston so that we wouldn't even have the costs of the meeting room that we're now going to incur.

I don't understand what the problem is with this. It is not a controversial bill. It is a bill that we're going to have unanimity on and probably have a very good bill by the time it's over, and that's probably why we haven't had people banging down the door to participate and to make their views known, although I've appreciated the points that have been raised because they've clearly signalled the need for amendments. But I think it makes absolutely no sense at all to spend the kind of money that we're going to spend when we can hear from people just as appropriately through a different technical mechanism.

**Mr John Yakabuski (Renfrew-Nipissing-Pembroke):** I certainly agree with the members on the opposition side here, the third party. The government has made it clear, and the finance minister has made it clear, that given the circumstances they've been articulating over and over again we'd have to find creative ways of being more efficient in the way we spend our money. The teleconferencing option is a way that is not even that creative, but certainly will be more efficient in the way we spend our money. It will in no way affect the opportunity of persons or organizations who want to make submissions to the committee—it will in no way hamper them in doing so. Without repeating the points of others, I certainly think we should explore and go ahead with the option of teleconferencing in the way Ms Martel articulated could be done in one day. That would certainly serve the purpose of the submissions on the bill but would also save the taxpayers money, which is something we're all trying to do.

1020

**Mr Kormos:** Very briefly, let's also consider some of the practicalities of the season. Over the last two days we saw real pressure on Pearson airport in terms of flights cancelled and so on. Quite frankly, once again, the prospect of travel out of Toronto in the months of January and February has inherent problems. The best laid plans of mice and men—you could end up making all these wonderful plans and having them kiboshed and incurring yet more expense and more inconvenience.

I put to the government members and Mr Berardinetti that I read in the Globe and Mail earlier this week about the triumvirate of communications gurus, the high-priced help—I know you're not one of them; they're paid more than you are—in the Premier's office who are controlling the messaging. Far be it for me to give advice to government members, but the government members may want to ask for a brief adjournment to go and talk to the communications gurus, to ask them to reflect. As Mr Justice Osborne noted the other day downtown, how is it



going to look in tomorrow's paper when the National Post—as they have been wont to do about the flagrant, gross overspending and the expenditure on luxuries here at Queen's Park—runs a story about the committee blowing tens of thousands of taxpayers' bucks for an hour and 20 minutes of hearings in one community and two hours of hearings in another? That's gratuitous advice, which is probably worth exactly what you're paying for it, for your consideration, because I like you guys.

**Mr Lou Rinaldi (Northumberland):** I certainly support the fact that we need to save money. Anybody in their right mind who would want to waste money certainly is on the wrong side of the page. Once again, I am new here, the same as some of my cohorts—all of us, I guess—and I made a strong commitment when we formed the government, which we did, that we were going to bring the government to the people of Ontario, and I guess I'm referring mostly to rural Ontario. One of the things under the previous member from my riding was that the people in a 20-story building at Queen's Park could not see Northumberland county or any other part of rural Ontario.

If we truly wanted to use technology and save money, I think we could have done the whole thing through teleconferencing. Those people, especially yesterday, are to be congratulated for braving the weather. Some of them were late, but they made it here because this was very important to them. Why is something from people in Sault Ste Marie or Kingston—and we promoted that we were going to listen to those people—any less important than something from those who came here the other day? If we truly want to use technology and if we, as a government, believe that technology works and we want to use teleconferencing, then we should scrap this whole hearing process and we could all do it from the comfort of our living rooms. I would have loved to stay in my living room in Brighton yesterday instead of taking two and a half hours to come to Toronto to listen to the very important submissions we had yesterday. They were very good.

When I hear about spending thousands of dollars, when we think of the importance of this bill and the fact that it's been on the books for God knows how many years, way before my time here—and we do have some consensus of all-party support—I think it's very important that we listen to those people. I'm not suggesting that teleconferencing is not as good, but it certainly makes a big difference when I can sit across the table, one to one, and address those issues. I don't believe in double standards. Considering the amount of time and money that former governments have spent to come up with what we think—from what I've heard in the last couple of days—is a good compromise, with fine tweaking, I think a little bit of expenditure is the least we can do, as elected officials, to really prove to Ontario that we as a government and all members are listening to what they're saying. I don't think it's a waste of money.

**Mrs Witmer:** One final comment: This bill—and I guess the government members probably don't know

this—has been with us for a long time. I was Minister of Health when we drafted the first version. There has been ample opportunity for people to give input. I think we can see by the input we're receiving that this no longer is a controversial bill; it's a bill that really does reflect the best advice of people throughout Ontario. What we're dealing with now are requests for some very minor amendments.

Certainly we need to operate and be seen to be operating within a democracy, but whether you travel or whether you do it here, at this point in time everyone is going to have the opportunity to make a presentation. I know the government has been given their marching orders, but do you know what, folks? At a time when we see there is a problem with the finances of this province, I don't know how we can justify traveling when we have the opportunity for everyone to make their presentation and do it in a way that to me is much more fiscally responsible. I think we, as a government, need to lead; we need to demonstrate. Mr Sorbara is telling us we have a problem. Well, do you know what? We need to fix that problem, and it needs to start with us.

**Ms Kathleen O. Wynne (Don Valley West):** I'm going to hold off on my remarks. I'm going to suggest that we hear the deputants now, and if we need to continue this conversation—and we do need to continue this—we do it at lunchtime. Can I ask for consent from the committee to hear the deputants now?

**The Vice-Chair:** Is there consent?

**Ms Martel:** I probably won't be speaking to it any more. I was going to move a motion so we could actually have it on the floor and vote on it.

**Ms Wynne:** I just don't want to go into any more discussion. I think there are a couple more of us who have something to say, so I'd like consent to hear the deputants now. That's what I'm asking for.

**Ms Martel:** As long as I can get consent that when we go back to it, the discussion will be on Hansard. I don't want to move in camera.

**Ms Wynne:** That's fine. I don't have a problem with that at all. We'll continue this discussion on the record once we've heard from the morning deputants. Is that all right?

**Ms Martel:** Yes.

**Ms Wynne:** OK. Thank you.

#### OFFICE OF THE PROVINCIAL AUDITOR

**The Vice-Chair:** Our first presenters are from the Office of the Provincial Auditor. Good morning. You have 20 minutes to present. You may begin now.

**Mr Gary Peall:** My name is Gary Peall. I'm a member of the senior management of the Office of the Provincial Auditor. Seated beside me is John Sciarra, our executive assistant. Jim McCarter, the assistant Provincial Auditor, who is currently acting as Provincial Auditor while that position is vacant, is attending a financial statement symposium with the other Auditors General across the country and is unable to attend today.



In Jim's absence, I have been delegated the responsibility to act in his place.

We certainly appreciate the opportunity to comment on the proposals contained in Bill 31. I'd like to assure the committee from the outset that we won't be expressing outrage or carrying picket signs either. We're quite supportive of the bill.

We have reviewed the proposed legislation from the perspective of its potential impact on our office's ability to access information and records that we require to perform our audit duties under the Audit Act. We are particularly concerned about the possible impact of Bill 31 should the proposed amendments to the Audit Act contained in Bill 18, which was tabled by the Minister of Finance on December 9, 2003, be passed.

We respect the principles upon which the proposals contained in Bill 31 have been drafted. However, I also want to emphasize the needs of our office vis-à-vis the Ministry of Health and Long-Term Care's proposals. There are times when our staff need access to personal health information in the custody of the ministry in order for the Provincial Auditor to fulfill his or her duties under the current Audit Act, and from other health information custodians under the expanded mandate of the office as proposed in Bill 18. In this regard, we are pleased to note that schedule A of Bill 31, entitled the Health Information Protection Act, 2003, recognizes the need for the disclosure of personal health information for our audit purposes.

However, we do have a significant concern with a proposal contained in schedule B of Bill 31, entitled the Quality of Care Information Protection Act, 2003.

#### 1030

While members here are no doubt familiar with the role and responsibilities of the Provincial Auditor, it might be useful just to provide you with a little background before I get into specific concerns we have. We are appointed as an officer of the Legislative Assembly and are responsible for the administration of the Audit Act. Under subsection 9(1) of that act, the Provincial Auditor is required to audit the accounts and records of the receipt and disbursement of public money forming part of the consolidated revenue fund, whether the money is held in trust or otherwise. To this end, the office of the Provincial Auditor audits the administration of government programs and activities, as carried out by ministries under government policies, and performs attest audits of the financial statements of the province and those of various crown agencies.

I want to emphasize that the work of our office is carried out in strict confidence and our employees are bound by the confidentiality restrictions imposed by sections 21 and 27 of the Audit Act. As well, according to section 19 of the Audit Act, our working papers cannot be laid before the assembly or any of its committees. As well, audit files and working papers, which include all information obtained from an audit entity during the course of an audit, cannot be accessed from our office under the provisions of the Freedom of Information and

Protection of Privacy Act because, by necessity, our office is not subject to its provisions, thus further ensuring the confidentiality of any information we collect.

Under section 10 of the Audit Act, every ministry, agency of the crown and crown-controlled corporation is required to provide the Provincial Auditor with such information regarding its powers, duties, activities, organization, financial transactions and methods of business as the Provincial Auditor requires. Also, the Provincial Auditor is to be given access to all books, accounts, financial records, reports, files and all other papers, things or property belonging to a ministry, agency of the crown or crown-controlled corporation necessary to the performance of the duties of the Provincial Auditor. For instance, in our audits of the Ministry of Health and Long-Term Care, we have needed from time to time to access information and records relating to personal health information. The ministry has always provided us with full access to that information and the records we've needed in its custody, as required by the Audit Act, including access to files such as OHIP claim files.

However, the ministry also provides grants to a variety of health care providers and institutions for the delivery of health care services to Ontario's citizens. Under subsection 13(1) of the Audit Act, we may perform an inspection audit of a payment in the form of a grant from the consolidated revenue fund or from an agency of the crown. However, an inspection audit provision in the Audit Act allows us to determine only whether the recipient of the grant has spent the funds provided for the intended purposes, but restricts us from performing any value-for-money-related audit work of grant recipient organizations. For many years, to allow us to better serve the Legislative Assembly, we have asked the government to amend the Audit Act to enable us to perform full-scope, value-for-money audits of grant recipient organizations.

Recently, the government responded to our request when the Minister of Finance introduced Bill 18, An Act respecting the Provincial Auditor, which, if passed by the Legislature, will give the auditor the discretionary authority to perform value-for-money audits of grant recipient organizations. I should point out that in drafting the amendments contained in Bill 18, advice was obtained from the Office of the Information and Privacy Commissioner to ensure that subsection 27.2(1) of that bill, regarding the confidentiality of personal information, meets current privacy requirements. In particular, subsection 27.2(3) of Bill 18 refers specifically to medical, psychiatric and physiological information because we recognized that, as with our audit work at the Ministry of Health and Long-Term Care, under the proposals of Bill 18 we could from time to time require access to personal health information in the custody of a grant recipient organization.

Turning to the specific concern with the provision of schedule B, this schedule protects from disclosure information that is provided to a quality-of-care committee of



a health facility or a health care entity or oversight body that is prescribed in the regulations. From our reading of this proposed legislation, there is a potential conflict between its provisions and the intended full access to information and records provisions contained in Bill 18.

Here is an illustration of the potential conflict we see. Under the proposed expanded audit mandate of Bill 18, if we were to perform a value-for-money audit of a hospital, it would be logical for us to examine the systems and procedures that the hospital has in place to monitor and improve quality of care so that the auditor can provide the board of trustees, the Legislature and the public with assurance that the hospital's systems and procedures are adequate. One such procedure might be the establishment of internal quality-of-care committees. However, the provisions of schedule B would prevent our office from reviewing quality-of-care information or assessments and evaluations done by a quality-of-care committee, including its recommendations to the management of the health facility itself.

The proposed legislation would also seem to prevent us from having access to any information disclosed to a quality-of-care committee. We are concerned that the restrictive provisions contained in schedule B could severely limit the possible scope of value-for-money audit work at a health facility, as defined in the act, and could prevent us from concluding on the adequacy of the procedures in place at such a facility. This, in my opinion, would contradict the intention of Bill 18 regarding the auditor's proposed expanded audit mandate.

To address this concern, our suggestion would be to amend the bill by providing a specific reference in subsection 4(3) of the act that would permit a quality-of-care committee to disclose quality-of-care information to the Office of the Provincial Auditor for the purpose of enabling the auditor to carry out his or her responsibilities under the proposed expanded audit mandate contained in Bill 18.

That concludes my remarks. Thank you very much again for the opportunity to present our concern. I would be pleased to answer any questions that the members of the committee might have.

**The Vice-Chair:** Thank you very much.

**Mr Peter Fonseca (Mississauga East):** I'd like to thank the Provincial Auditor for your presentation and for being here with us today. In regard to some of your last comments, the Provincial Auditor does have access to personal health records. Do those not give you enough information to do your work? What kind of information would you be looking for, exactly, within those personal records?

**Mr Peall:** The personal records that we would examine would be the ones supporting the actual procedures that a hospital would put in place to ensure the quality of care. If we were trying to conclude whether or not the policies they had established or were required to follow by regulation or legislation were actually being followed, the only evidence we could secure to determine that and conclude on that would be to examine the individual patient records.

**Mr Fonseca:** Would that not be sufficient?

**Mr Peall:** We'd also need to see what is done with the process from there on in. If they've established a whole set of procedures to make sure that their quality of care is maintained or improved, we would want to examine each of the steps along the way and the evidence that is there to prove that that is taking place. If, for example, they identify concerns, there should be a process in place to follow up on those concerns, to make certain recommendations for changes and that there is some follow-up process so that the institution and the board of trustees of that institution, if there is one, are assured that those things have been addressed. It's really having access to all the information to allow us to confirm whether those systems and procedures work as they were intended to.

**Mr Jeff Leal (Peterborough):** Just to follow up from Mr Fonseca, there were recent revelations, a long, in-depth series of articles in the Toronto Star about care in long-term-care facilities, indeed what you're suggesting here, the ones that are operated under provincial government regulation. So you're suggesting in your previous answer that you need those powers to look at those kinds of problems when you do money-for-value audits in the broader public sector?

**Mr Peall:** In the broader public sector, yes, that's our main concern and that's what Bill 18 introduces: the new powers for us. My understanding is—and I could be corrected—under long-term-care facilities, in the relationship we have now we already have access to that information and have had it in the past. So I believe we can access what we need to deal with those facilities. It is the broader public sector that we need access to.

**Mr Leal:** Thank you very much.

**Mr Yakubski:** I think you've already addressed it, but it seems to me that your concern is that the Office of the Provincial Auditor would itself be handcuffed in the carrying on of its own investigations should the provisions in this bill not be amended in some way to allow you to have more access to those records, particularly in the case of auditing a health facility like a hospital.

1040

**Mr Peall:** That's correct; certainly something as important as the quality of care, which everyone would agree is fundamental.

**Mr Yakubski:** You've indicated the section that you would like to be amended in your submission. Very good. Thank you very much. Sorry about the delay.

**Mr Peall:** Don't apologize. Any discussion of value for money is time well spent as far as we're concerned.

**Mr Yakubski:** We staged that because you guys were coming.

**Ms Martel:** I just want to get confirmation. Right now, in long-term-care facilities you can, and have been able to, access what essentially would be quality assurance matters—not just matters with respect to quality of care, but matters involving personnel. Is that correct?

**Mr Peall:** I'm not absolutely certain of that.

**Ms Martel:** I'll tell you where I'm going, because normally I'm supportive of what the auditor moves



forward with, but I'll tell you what concerns me about schedule B in your request.

My understanding is, and my understanding may be wrong, that essentially the information we're talking about, coming from a quality-of-care committee, would be information that would impact on an employee's conduct versus systems and procedures to improve quality of care in a hospital. Maybe sometimes there's a very fine distinction between those, but that's my understanding.

I have no problem with your looking at concerns that would come to a committee involving procedures and standards and how to improve those. I'm a little more concerned about information that relates solely to an employee's conduct and how the institution or facility dealt with that in terms of their human relations. That's why I'm asking the question about what you do in long-term-care facilities now. If you do that already, then I could understand this would be an extension of something that you do. But I'm not clear that that's what you do and that's why I'm nervous about what you're requesting.

**Mr Peall:** Certainly in the kinds of audits we do, we don't take it to a level of personal cases in terms of what action was taken. However, we do have to confirm whether or not there is a process to take corrective action. It's not up to us to judge what corrective action ought to have been taken, and in this particular case there'd be professional matters associated with that which we're not in a position to judge and wouldn't attempt to, but we do have to be satisfied that there is a process in place to take care of those.

I can't think, off the top of my head, of a time when we've actually got into one of those circumstances in a long-term-care facility, but again, it would just be strictly process. I can certainly check with my office to see if there are any other kinds of situations we've been in, but certainly we wouldn't be looking at any individual case from the point of view of, "What did you do in this particular instance?"

**Mr John Sciarra:** If I can just add something. I don't believe the definition of "health facility" in schedule B includes long-term-care facilities.

**Ms Martel:** It was a recommendation that was made yesterday in one of the hearings, so you wouldn't have been party to that.

**Mr Sciarra:** Oh, OK.

**Ms Martel:** I'd appreciate it if you could get back to us. Thanks.

**The Vice-Chair:** Thank you very much for your presentation.

#### PSYCHIATRIC PATIENT ADVOCATE OFFICE

**The Vice-Chair:** Good morning. You can begin your presentation.

**Mr David Simpson:** Thank you, Mr Chair and members of the committee. Good morning. My name is

David Simpson. I'm the program manager with the Psychiatric Patient Advocate Office. With me today is Lora Patton, our legal counsel at the patient advocate office.

We would like to thank the committee for its invitation to further consult on the proposed bill. We are here today to share our perspective as a rights protection organization and to let you know from our two decades of experience where we think this legislation can be strengthened to provide maximum rights protection for our clients and others with respect to the privacy of their personal health information. We are also pleased to inform the committee that the Mental Health Legal Committee, a group of more than 50 lawyers who represent our clients, has also supported our submission. You will notice too in our written submission before you that we also support a number of the recommendations made by the Canadian Mental Health Association, Ontario division.

Let me begin this morning by telling you who we are and what we do. The Psychiatric Patient Advocate Office was established in 1983 as an arm's-length organization of the Ministry of Health and Long-Term Care to protect the civil and legal rights of in-patients in the current and divested provincial psychiatric hospitals. Since our inception we have been partisan advocates for our clients.

We provide a range of services, including instructed and non-instructed advocacy, systemic advocacy, rights advice and public education. Since the changes to the Mental Health Act in 2000 we have also been designated by more than 95% of the schedule 1 hospitals in Ontario as rights adviser, now providing more than 20,000 rights advice visits, working on more than 4,500 advocacy issues and 140 systemic advocacy issues per year. Last year we also had more than 250,000 hits on our Web site, which has become an important tool in our public education efforts.

While our submission will focus on areas of this act that we feel are not adequate, we would like to acknowledge that the bill is a marked improvement over previous drafts. Specifically, the patient advocate office is pleased that PHIPA strengthens the privacy protection afforded to individuals through a very broad definition of personal health information; an obligation to obtain explicit consent for fundraising and marketing, which should not include provisions for opting out; and an expanded oversight role for the Information and Privacy Commissioner. Further, this bill restricts access by the Minister of Health and Long-Term Care and balances that access with a number of safeguards. PHIPA as well incorporates whistle-blower protections and ensures public consultation for most regulations. In general, the legislation is based on the fundamental value that individuals own their information and consequently should control its collection, use and disclosure.

However, as with any significant piece of legislation, PHIPA has certain limitations. While we are going to focus on two primary areas in a moment, we would like to draw your attention to a number of key issues that we



will not have time to discuss in detail. These include our status as a health information custodian; disclosures without consent or notification; the use of “informed” consent rather than “knowledgeable”; clarification of substitute decision-makers, a default substitute decision-maker, and the authority of a board-appointed representative; and more stringent rules around disclosures relating to risk.

PHIPA attempts to govern all personal health information across a number of sectors. While consistent rules are necessary throughout the health care system, both institutionally and in the community, some personal health information has a greater sensitivity attached to it due to its very nature. Mental health information is one of these special types of information that in fact may require special rules.

As a rights protection organization, let us be clear that PHIPA significantly erodes the rights that patients in psychiatric facilities currently enjoy. We will highlight some of these this morning.

The two broad issues that we are going to highlight from our written material are PPAO's access to client information and areas of PHIPA that fail to recognize the special quality of personal mental health information.

As I stated, the PPAO has been providing advocacy in Ontario's 10 provincial psychiatric facilities since 1983. Advocacy takes many forms: assisting in self-advocacy; individual instructed and non-instructed advocacy; regional and provincial systemic advocacy; and public education. In every case of individual advocacy, it is our preference to receive a client's instruction. Unfortunately, our clients are sometimes unable to communicate their needs and to instruct patient advocates due to their illness, including perhaps having dementia, a dual diagnosis, schizophrenia, an acquired brain injury, or their medication may interfere or other factors. In cases where such clients are unable to instruct patient advocates, we ensure that their basic quality of life and care concerns are met through non-instructed advocacy.

**1050**

Our approach is to begin advocacy at the level of least contest: approaching the decision-maker closest to the issue. Such advocacy requires a great deal of communication with front-line staff and administration. Often issues are resolved very quickly with an inquiry from the patient advocate.

The authority to perform a patient advocate's duties presently comes from the Mental Health Act, section 9. You'll see that located at page 2 of our written submission.

The Minister of Health and Long-Term Care designates patient advocates under section 9. Authority in divested hospitals is derived from a standard memorandum of understanding signed by the facilities, the Ministry of Health and Long-Term Care and our office. The wording is described in our written submission.

There has been a lack of clarity respecting the patient advocate's ability to access patient records for a period of time, given the tension between section 9 of the Mental

Health Act, which appears to provide authority for a patient advocate to access “books, records and other documents relating to patients” and section 35, which requires all disclosures to occur according to the rules in that section.

While the PPAO has largely been able to provide services despite the lack of clarity to this point, PHIPA will further complicate this process as that legislation and its disclosure rules appear to supersede any authority granted through section 9 of the Mental Health Act.

PHIPA does not presently provide any access to patient records for patient advocates. While patient advocates could obtain formal consent from the person or their substitute decision-maker, as would any other person wishing to access records, such a process would be impractical and unwieldy and would fail to ensure the protection of the most vulnerable clients—those who could not consent.

This process would be impractical because patient advocates would be unable to discuss client issues with staff on an ad hoc basis and would therefore be unable to resolve matters quickly, without further escalation.

It would be unwieldy to regularly obtain updated consents for each client that patient advocates speak to and to have staff acknowledge the same by reviewing the record before each discussion. Also, patient advocates may not wish to alert staff immediately to an issue; they would want to review the information in the clinical record first in some situations.

It would also fail to protect our most vulnerable clients, those who are unable to consent to release their own records or to instruct patient advocates. Patient advocates must be able to protect these persons without the step of obtaining consent from a third party who in fact is not their client. You will note that our recommendation is for PHIPA to provide our office with clear authority to carry out our mandate.

The second broad matter we are going to discuss relates to specific issues of mental health information. There are a number of areas in the legislation that presently fail to address matters specific to our clients.

The first issue is regarding disclosure of information without consent. Personal health information relating to mental illness is perhaps one of the most sensitive of the various types of information. Rules around disclosing that information cannot be dealt with in the same manner as general health information, yet PHIPA makes no distinctions. The continuing discrimination against persons with mental illness makes disclosure of information without consent a serious matter. A person who has been admitted to a psychiatric unit in crisis is much less likely to want that information shared than a person admitted to cardiac care.

Consequently, section 37 is not appropriate in the mental health context. The provision allowing a facility to contact a relative or friend if the person himself or herself is unable to consent where they are “injured, incapacitated or ill” is far too broad a statement. Many persons with mental illness entering hospital may be in



crisis and unable to immediately communicate their wishes regarding contact. That same person may feel very strongly that he or she does not wish to have family involved due to embarrassment or other factors.

Further, the ability to share information with those inquiring if the person is a patient, their general health status and location in the hospital is inappropriate. If the facility is a psychiatric hospital, informing someone that the person is a patient also discloses that the person is likely to have a mental illness. The person's general status could mean disclosing that the person is acutely ill and in four-point restraints. Location in a facility, when it is a general hospital, could mean stating the person is being held on the psychiatric ward. Many persons with mental illness would not want this information shared, particularly if the inquirer were an employer, probation officer or a separated spouse involved in a custody dispute. This would be a significant departure from current practice under the Mental Health Act.

We recommend that PHIPA not permit such disclosures without the explicit consent of the individual. Section 37 should be amended to permit the disclosure of information regarding a person's status, location in the facility or their condition only in circumstances where such disclosures would not disclose a diagnosis or mental health information. This would make it consistent with Manitoba privacy legislation. Also, appropriate emergency provisions could be created to permit disclosures in limited circumstances.

The Psychiatric Patient Advocate Office is also concerned about the provisions related to "implied consent." Implied consent to disclose information is inappropriate as it relates to mental health records or information, even where such information is being disclosed to another health practitioner for the purposes of providing health care. The increased sensitivity of such information and the continuing stigma encountered by our clients dictates that such disclosures only be made on the express consent of the individual or their substitute decision-maker.

The PPAO submits that subsection 20(3), a provision allowing a disclosing health information custodian to advise a receiving health information custodian that full disclosure was not provided due to limited consent, is inappropriate in the mental health context. One of the criticisms of privacy legislation in the past has been that health care practitioners will share information about patients without consent. While this provision improves on such open disclosures, a real concern exists that persons with a mental health history will be required to share that information with unrelated health care practitioners, which may result in actual or perceived reduction in service.

For example, clients have advised our office that their complaints of physical symptoms are not taken as seriously by health practitioners when the practitioners are aware of their mental health history. Inquests have also raised this concern. As such, persons with a mental health history are perhaps justified in not sharing that

information with health care practitioners they are seeing for unrelated purposes. Allowing the disclosing health information custodian to advise of the undisclosed information will undermine that ability.

Information belongs to the individual, and he or she must be permitted to disclose it as wished. If non-disclosure places them at risk, that is a risk that the individual may assume with appropriate informed consent. If non-disclosure of significant information is an issue, it may become part of the determination of capacity.

We are also concerned that the harm provisions might be over utilized by health information custodians who want to provide full information, without consent, citing risk and liability issues. That would undermine the intent of the lockbox. The PPAO has addressed the harm provision in the written submission, and we would encourage more stringent rules around the release of information for this purpose.

The last issue involves access to information. PHIPA will repeal the provisions of section 36 of the Mental Health Act and replace the section with access to one's own personal health information provisions under PHIPA. The Psychiatric Patient Advocate Office believes that section 36 of the Mental Health Act should not be repealed but should remain and be exempt from PHIPA.

Section 36 of the Mental Health Act in its present form provides significantly increased protections to persons in mental health facilities. Under the Mental Health Act, the facility must provide access to a record within seven days as opposed to the 30 days with indefinite extensions found in PHIPA.

#### 1100

The Mental Health Act places the burden of withholding a portion of the record on the Consent and Capacity Board; that is, if the facility wishes to withhold the record, it must apply for permission to do so. PHIPA places the burden of the application on the individual. Instead of providing clear and responsive access to one's own record, PHIPA significantly erodes the protection of our clients.

The PPAO recommends that the present provisions under section 36 of the Mental Health Act be retained in the context of mental health facilities and, further, that the present provision for rights advice in section 38 of the Mental Health Act be retained.

In conclusion, the Psychiatric Patient Advocate Office is pleased that the government has taken this step to create legislation that will enshrine privacy protection both institutionally and in the community. We would, however, like to encourage this committee to strongly consider the recommendations relating to the protection of information specific to mental health.

We look forward to working with the government in finalizing, implementing and educating stakeholders on this new law.

**Mr Yakabuski:** Thank you very much for joining us this morning and thank you for your submission.



It seems you have a bit of a conflict. You feel one portion of the bill is too restrictive in your access as an advocate and another portion of the bill is not restrictive enough when coming to the disclosure of patient information to other health care providers. Am I reading that correctly?

**Mr Simpson:** Yes.

**Mr Yakabuski:** So what you're looking for is amendments to allow you, as an advocate, more access to those patient records in the case where people may or may not be able to make that informed consent themselves, but you want to see the exchange of information tightened up, particularly with people with mental health difficulties, when it comes to their cases being disclosed to other health care providers.

In your case, where you can't get that access, you're saying you're afraid you won't be able to get that access under section 35?

**Ms Lora Patton:** Our understanding of the new bill is that at present we won't have any access to any information, including conversations with staff on the floor of the facility. The day-to-day practice of patient advocates is to obtain an issue from a client: They've come to us; they've asked us for assistance. We then proceed with assisting them. Quite often they will give us some form of consent or certainly their agreement to pursue the issue. We're not simply going into someone's record. To be able to resolve those issues in some sort of reasonably efficient way, we would have to have those conversations on the floor with the staff, rather than escalating it to higher levels of administration. If we're required to get a form 14 or whatever the equivalent would be under the new legislation, the informal processes couldn't happen day to day on an ad hoc basis.

As well, Mr Simpson commented on the fact that we have clients who are unable to instruct us. These are clients who are most ill and, just to provide an example, one case that we had was a client who was in a locked seclusion room. They were left for a considerable period of time without access to washroom facilities, without access to walking around. In one case it was a client who had artificial limbs and they were removed, so she was unable to even walk on her own. If that client is unable to provide consent to us to access the record, it would be incumbent on us to find their substitute decision-maker. Under this legislation, we wouldn't even have the authority to find out who the substitute decision-maker is to get that consent. As a result, our advocacy activities are really handcuffed.

While I appreciate the conflict between on the one hand asking for increased access for our services—we are one of the safeguards that are built into the Mental Health Act to provide safety, to increase the quality of care and service to clients with severe mental illness. That's not the same situation that another health information custodian would be in.

**Ms Martel:** If I just might follow up with respect to the comments on access to records, what you stated was that you needed clarity or some clear authority to carry

out your mandate, and you made that reference particularly with respect to access to records. What would be the changes, then, that you propose in the bill that would more clearly point out that authority?

**Ms Patton:** One of the things that Mr Simpson mentioned was that section 9 of the Mental Health Act is our present authority in the non-divested psychiatric facilities across the province. While we may suggest something similar to that, in recent years it has become clear that there is some disagreement that that even provides us with effective authority. So we would ask for a clear exemption in the disclosure rules for access to patient advocates.

**Ms Martel:** I understand what you're saying. Thank you.

**Mrs Maria Van Bommel (Lambton-Kent-Middlesex):** I'd like to draw your attention to page 7 of your presentation. In the area of ability and right to appeal, you're saying that under the current Mental Health Act a person has the right to view findings in their files as they impact upon their legal rights and that the current legislation we're discussing is going to jeopardize those protections. Could you elaborate on that and possibly give an example?

**Ms Patton:** Under the Mental Health Act currently, someone who is found incapable for accessing his or her records has the absolute ability to apply to the Consent and Capacity Board to review that finding. Under the present draft of PHIPA, a person only has the ability to review that finding if they don't already have a substitute decision-maker in place, and that limit, we would submit, is inappropriate. If that finding is made, a person should have absolute authority to have that reviewed by an independent body.

**Mr Simpson:** You'll also see in our submission that we make a recommendation with respect to fees for accessing records. For many of the clients we work with, their sole income is government assistance, whether it be ODSP or Canada pension, disability benefits or something like that. There is no standard right now across the province, so hospitals charge different amounts. We're concerned that the fees charged shouldn't bar your access to getting access to your information and also shouldn't cause you financial hardship. It's your information; you should be able to access it if you'd like to see it. So you'll see in our submission that we talk directly to that and make a recommendation that if the fees are going to bar access or cause financial hardship, then the person shouldn't have to pay those. We're concerned that a great way to keep people from seeing their information is to escalate a fee schedule.

**The Vice-Chair:** Thank you very much for your presentation.

#### NATIONAL ASSOCIATION FOR INFORMATION DESTRUCTION

**The Vice-Chair:** The next group is the National Association for Information Destruction. Good morning.



**Mr Dan Steward:** Good morning. My name is Dan Steward. I'm a member of the executive of the National Association for Information Destruction, or NAID. With me today is Sheldon Greenspan, the chair of NAID Canada. Sheldon and I are affiliated with companies involved in the provision of records and information management and document destruction services. On behalf of NAID, we would like to thank the committee for allowing us to appear here today to discuss Bill 31.

We believe this bill is a positive step in helping safeguard the protection of personal health information and ultimately the privacy of Ontarians. For this, the government should be commended.

We hope the government will take the opportunity of eventually introducing complementary legislation for the private sector which would supersede or replace the privacy provisions that are currently in force under the recently implemented federal PIPEDA legislation.

**1110**

Bill 31 does an excellent job of dealing with the collection, maintenance and disclosure of information. However, we are concerned that the legislation in its present form, like PIPEDA and other pieces of privacy legislation in this country, does not effectively address a critical part of the information life cycle—namely, the destruction and disposal of information—with the result that it jeopardizes and weakens the very privacy protection it seeks to provide. Information, be it documents or records of any kind, is only as secure as the weakest link in the life cycle. This legislation does not currently provide adequate measures to ensure the proper destruction and disposal of potentially sensitive information.

We also have some concerns and questions about the relationship between health information custodians and their agents, as currently outlined in the bill. We will address these issues here today.

First of all, I would like to start by telling you a little bit about NAID. NAID Canada, which was formed last spring, is a national association that represents companies that specialize in secure information and destruction of documents. We are a chapter of the National Association for Information Destruction, which was founded in 1993 in the United States. There are currently over 375 NAID members throughout North America.

Our mission is to raise awareness and understanding of the importance of secure information and document destruction. In doing so, we want to ensure that private personal and business information is not used for purposes other than that for which it was originally intended. NAID plays an active role in the development and implementation of industry standards, advocacy and professional development. NAID has also developed an industry certification standard for its member companies.

NAID is also active at the legislative level, not only here in Canada but in the United States and other jurisdictions around the world. We are actively working to promote common standards and approaches to the disposal and destruction of information and privacy protection.

Here in Canada, we have met with federal officials from Industry Canada and the office of the privacy commissioner. We have also met with and made submissions to various officials from both British Columbia and Alberta regarding the development, implementation and enforcement of their privacy legislation. Here in Ontario, we have met with and made submissions to officials from both the previous and current administrations to share our views on the development of made-in-Ontario privacy legislation. We intend to continue working with all levels of government to ensure the best possible protection of personal information and individual privacy.

Sheldon and I could easily spend all day discussing with you the best ways to destroy and dispose of information, be that crosscutting, continuous shredding, pulping and incineration or a variety of other methods, depending on the nature of the information, how and where it is stored, the volume of information and a range of other considerations, as well as why every organization should use one of these methods to ensure the proper protection of such information.

However, today we would prefer to focus on a few specific measures that we believe must be part of this legislation in order to ensure the effective protection of health information and privacy of individuals and, in doing so, provide some clear definition and direction for those who will be subject to the legislation regarding what constitutes proper destruction and disposal of information.

With these points in mind, we offer the following recommendations regarding Bill 31:

First, we believe that this legislation will be strengthened significantly if specific references to and definitions of the terms “destroy” and “dispose” are adopted and incorporated in the legislation, as appropriate. Similarly, we want to bring to the committee's attention regulations that we believe are necessary to support the implementation and enforcement of this legislation in order to ensure that information is properly destroyed and disposed of.

In several sections of the legislation—in particular 10(3), 13 and 17—the bill refers to the term “dispose.” However, the legislation does not define what is meant by the term “dispose” nor does the legislation mention any prescribed requirements regarding what constitutes effective disposal.

We raise this point because the word “dispose” and the notion that the disposal of health information implies, means or guarantees the destruction of this same health information is not assured.

It is also very important to note at this juncture that recycling is not an acceptable alternative to information destruction, nor is it good enough to assume that information put in a garbage bag or some other receptacle will effectively be destroyed.

To guarantee the secure protection of personal health information, this information must be destroyed before it can be either disposed of or recycled. And to effectively



protect privacy, any standards for the proper collection, management, use and disclosure of information must also include specific requirements for proper destruction and disposal of this same information.

An important consideration when developing and implementing provisions respecting protection of personal information is that identity theft and other information-based crimes are among the fastest growing in Canada and indeed in Ontario. They are growing, in no small part, because of inadequate destruction and disposal requirements. Failure to adequately address the destruction and disposal of health information will only contribute to the continued growth in these activities, be they criminal or otherwise, and further jeopardize the privacy of Ontarians.

Let me be clear. We understand that protection from identity theft and other crimes is not the only or even the main reason that Bill 31 needs to be strengthened.

If I may, I would like to quickly share with the committee an illustration of how the lack of appropriate provision and definition can lead to significant problems. This particular story was shared with us on many occasions by officials in British Columbia recently.

A British Columbian health administrator was asked to dispose of some health records. In the interest of saving some money, he decided late one evening to take these records to a beach and burn them in a bonfire. He thought no one would be the wiser and see him, and he also thought he would be fulfilling his duty of document destruction and disposal. He made the fire, but did so unaware that high tide was moving in. The tide not only washed out the fire but carried with it and scattered hundreds of personal health care records for miles down the shore line, making personal health information available to anyone walking along the beach. A true story.

An extreme example, yes, but there was no criminal intent on the part of the individual. He was asked to get rid of some information. He did so in the most efficient way he thought possible. There were no clear procedures to instruct him on how to do so and, unfortunately, the approach taken came at the expense of a number of unassuming individuals.

Stories like this are plentiful. Many of them originate here in Ontario. Recall the recent case of a big bank's computer hard drives that were not properly cleaned before being resold; or, more relevant to our discussion today, the case of the Ottawa woman whose medical records ended up as part of a real estate flyer.

It is for these reasons of personal protection and privacy that Bill 31 and ultimately the regulations developed in support of this legislation must include appropriate definitions and provisions prescribing requirements to ensure proper destruction and disposal of health records.

Some definitions: Specifically, NAID Canada would recommend that the following two definitions be included and added to sections 10(3), 13, 17 and elsewhere as appropriate in Bill 31: "'destroy (destruction),' the

physical obliteration of records when they are no longer required in order to render them useless or ineffective and ensure reconstruction of the information (or parts thereof) is not possible." For "'disposal,' the casting aside or getting rid of destroyed information."

We'd like to turn our attention to some principles supporting the development of regulations that we believe should be enacted respecting Bill 31. NAID Canada believes that development in support of this legislation must outline the conditions under which records containing personal and private health-related information may be discarded by organizations, and these include but are not limited to: requiring shredding of patient/individual records before they are disposed of; requiring that personal information contained in patient/individual records is erased before they are disposed of; requiring that personal information contained in patient/individual records be made unreadable before they are disposed of; and taking reasonable actions to ensure that no unauthorized person will gain access to personal information contained in the patient records between the time they are discarded and the time they are destroyed.

Specific mention should also be made that organizations are required to take reasonable steps to effectively discard information that requires destruction consistent with the definitions to be included in this act.

In order to comply with this legislation and its regulations, it should be recognized that recycling is not an adequate alternative to information destruction. Only after it has been properly destroyed can, and should, the information be recycled.

Sanctions and penalties should be highlighted so individuals and organizations are clear about the penalties if there is a failure to demonstrate due diligence in their attempts to destroy records containing personal health information.

We believe regulations should also outline specific requirements regarding where and how the information should be destroyed and disposed of, be this in-house, mobile or plant-based shredding, continuous shred, cross-cut/pierce and tear, pulverize, pulping, incineration.

Upon completion of the destruction process, a signed certificate of destruction should be provided by the vendor, termed an "agent" under the current legislation, to the health information custodian confirming that the records transferred from the custodian to the vendor have in fact been destroyed.

#### 1120

NAID also believes there should be regulations specifying the period of time that records are stored, which should be determined by a retention schedule taking into consideration their useful value and the governing legal requirements, of which we know there are unique considerations when it comes to health-related records.

Finally, ensuring the documentation of the exact date that the record is destroyed is also a prudent and recommended precaution.



Why regulations? As we noted previously, identity theft is one of the fastest-growing crimes. Heightened interest and concerns about these crimes, together with the introduction of various pieces of privacy-related legislation throughout North America, has resulted in rapid expansion of our industry. Many mature, established and well-run document destruction and information management companies have benefited from this, resulting in annual growth of 15% to 20% over the last few years.

This growth has also led to a sharp increase in the number of participants in our industry. This is both good and bad for consumers. On one hand, more service providers allow for more choice, both in quality and cost, for the consumer. On the other hand, in the absence of appropriate regulation, less reputable players are allowed to exist at the expense of both the industry and the people whom such legislation is meant to protect.

NAID Canada believes that the use of regulations in support of Bill 31 will provide the government with enough flexibility to adapt and change them as methods of destruction and disposal evolve over time. At the same time, they provide thorough legislative authority and oversight to ensure proper care is taken, both by the health information custodians and their agents, to ensure that the information is properly destroyed and disposed of.

As a final issue, we'd like to raise with you a concern we have about the use of agents. The legislation mentions, under subsection 17(1), how a health information custodian may permit a custodian's agent to collect, use, disclose, retain or dispose of personal health information on the custodian's behalf.

As we currently understand the legislation, our members would be considered agents for health information custodians. As such, the custodian would define the agent's duties and impose limits on what is expected of the agent, in accordance with the requirements of the bill.

Our question to you, and an area of potential concern, is the relationship between custodians and agents and the need for consent to destroy and dispose of information on the custodian's behalf. We assume and expect the onus to be on the custodian to obtain consent from individuals to allow their information to be destroyed and disposed of. If this is not the case, it would be a major concern to us, as our members would face an unreasonable burden and liability. Accordingly, we would like the provisions respecting the relationship between custodian and agent and the issue of consent to be clarified.

We'd like to thank you for your time, and hope you found this presentation useful. NAID Canada believes that by taking the necessary steps to ensure that the complete life cycle of information protection is properly addressed under the terms of the bill, Ontario will be taking steps to ensure that it is a leader in terms of privacy protection, not only in Canada, but also in North America and the world. We'd be pleased to answer any of your questions.

**Ms Martel:** Thank you for coming here today and raising these issues with us. This has been a much different presentation from the others we've had.

Let me deal with the recommendations you made with respect to subsection 10(3) and sections 13 and 17, where you were talking very specifically about definitions. I just flipped through those sections and wonder if what you were trying to achieve would actually be served by having specific definitions in the first part of the bill where those are listed and then the reference can be back to the definitions themselves, because these talk about individual rights to modify, collect, use and disclose, and a lot of those terms are found in the definitions section. Would it essentially deal with the concerns you have, that somewhere it be very precisely defined what that means so people can understand their obligations?

**Mr Sheldon Greenspan:** Clearly we want to have "destruction" defined, as opposed to "disposal." If it was set up in the definitions section, that would be appreciated.

**Mr Steward:** The ultimate goal is to avoid the BC case, so there's clarity about what those words mean.

**Ms Martel:** What it means and what your obligations are.

**Mr Greenspan:** Absolutely.

**Ms Martel:** With respect to the regulations, I haven't had a chance to look through, but I suspect we're going to need some new ones to deal with some of those provisions as well, rather than add on to the ones that are currently there.

**Mr Steward:** Most of the legislation, in terms of gathering consent for how information is used—we've kind of gone 90% of the way. This is the last 10% of the way, about how we finally take care of these records once they've served their useful life. Because the chain of security and protection is only as strong as its weakest link, we're really looking for strengthening on that last 10 yards, to use that analogy.

**Mr Berardinetti:** Thank you for coming today and presenting a very interesting presentation. Just a couple of very quick, short questions here. Do you represent all the groups that destroy records? I'm just trying to understand who you actually represent.

**Mr Greenspan:** Our association represents companies in the document destruction industry. I get all facets of the industry, including equipment manufacturers—

**Mr Berardinetti:** Private companies, for example, that are out there that provide shredding services?

**Mr Greenspan:** Yes, sir.

**Mr Berardinetti:** The second point is, what about electronic and/or computer records and microfiche-type records? How would you deal with that?

**Mr Greenspan:** Our position would be the same, the key point being that the information needs to be obliterated, irrespective of the media it's on. So the responsibility would be on the organization to ensure that that information on that media is physically destroyed.

**Mr Berardinetti:** Do you have a system or a recommendation of how those records would be destroyed if,



let's say, a doctor passes away and leaves behind a hard drive full of information?

**Mr Greenspan:** We're thinking that, in terms of the evolution of our industry, the technologies are changing so quickly on the media on which information is being stored, but also in terms of methods of destroying that information, that in the regulations it would allow for some additional flexibility to take into account future changes.

**Mr Berardinetti:** So you'd be willing to work with staff on that?

**Mr Greenspan:** Absolutely, but really the key point is that the information needs to be destroyed before the media on which that information was on is either disposed of or recycled or reused.

**Mr Berardinetti:** I understand. Presently, there is no professional standard for all the different groups—let's say doctors and hospitals and all the other groups that would be collecting this information. There is, I take it, no standard or procedure used for all these different caregivers or providers.

**Mr Greenspan:** That's really our hope: to establish a clear baseline in terms of the definition, and clarifying what the obligations are on the organizations and the people who have custody of that information.

**Mr Steward:** There are records going into places like landfill or sitting in you-store-it places where somebody doesn't want to incur the cost because the doctor has passed away or ceased practising or moved.

**Mr Berardinetti:** So your point is, again, destroy it at the point before that happens.

**Mr Steward:** If you say they're no longer required by all of the legislation that pertains to health records, then there's a clear way of now getting rid of them.

**Mr Berardinetti:** Because the definition of "records" is pretty broad in the act, I think, but your point goes beyond that.

**Mr Steward:** It doesn't matter what the media is. The technology does exist to destroy all of it now.

**Mr Yakabuski:** Thank you for joining us this morning. I think you've raised some very interesting points that we haven't heard before because of the nature of the other submissions. If we bring in legislation that takes privacy protection to a whole new level, which is the intention of this act, we then also assume the responsibility of protecting that information until such point as that information no longer exists, which includes its destruction. I think you've raised a very good argument for defining that in specific ways. The definition can certainly include any currently existing method of storage or anything that happens to come about because of improved technology. I think you've touched on some very good points with regard to the responsibility to protect that information until it no longer exists.

**Mr Steward:** Thank you.

**The Vice-Chair:** We're just going back to Mr Leal for one quick question.

**Mr Leal:** Mr Chairman, I'll be quick.

Thanks very much. It was a very interesting presentation. The fact of the matter is, so much information now moves internationally, I'm curious why the ISO hasn't developed a standard for document destruction that's consistent all over the world.

**Mr Greenspan:** NAID is actually working with a number of organizations worldwide on setting up, ultimately, worldwide standards. The Europeans have some very stringent legislation on the books. The Americans, of course, have some very stringent legislation, and, of course, there are various pieces within Canada. Clearly, the situation of being left behind is very scary, because in the jurisdictions that have the weakest privacy legislation, the ability for identity theft to transpire over borders is pretty scary. The thinking is that if a jurisdiction is the last to the party, so to speak, that's where a lot of criminals are going to end up committing their identity theft crimes because they realize that the penalties are the lowest or are non-existent. It's very easy to commit one of these criminal activities in a cross-border situation, so NAID is responding in terms of being on the cutting edge of lobbying with a variety of different governments, particularly in North America but also on a worldwide basis.

**The Vice-Chair:** Thank you for your presentation.

1130

#### CANADIAN INSTITUTE FOR HEALTH INFORMATION

**The Vice-Chair:** The next group is the Canadian Institute for Health Information. Good morning.

**Mr Richard Alvarez:** Good morning, Mr Chairman, and thank you, members of the committee. My name is Richard Alvarez. I'm the president and CEO of the Canadian Institute for Health Information. Some of you might know us as CIHI. I wish to thank the committee today for giving us the opportunity to appear in front of you. I have with me Ms Joan Roch, who is CIHI's chief privacy officer.

In my presentation, I will begin with my key message to you. I will then describe CIHI's unique role in health information in Canada, and I will end with some specific comments on the bill.

My key message to you is that CIHI supports this bill. It provides a framework of rules for the collection, use and disclosure of health information. It provides individuals with options regarding the disclosure of their information. It also recognizes that some information must flow for the purposes of accountability, management of the health care system and research.

That being said, we would also like to request two things: first, that consideration be given to establishing a special designation for CIHI that would reflect CIHI's multi-faceted role in health information; and second, that consideration be given to an amendment that would facilitate the services CIHI provides to health ministries in other jurisdictions.



By way of background, the Canadian Institute for Health Information was incorporated in December 1993 as a federally chartered, independent, not-for-profit organization, as agreed to by the federal, provincial and territorial Ministers of Health. The ministers also set CIHI's mandate, which is, briefly stated, to serve as a national mechanism to coordinate an integrated approach to Canada's health information system and to improve the health system and the health of Canadians by essentially doing three things: coordinating and promoting the development and maintenance of national health information standards; developing and managing health databases and registries; and providing objective and accurate analyses of health data, which are widely disseminated.

I should tell you that the flow of this data to support this mandate is complex. Let me give you some concrete examples of the data CIHI collects and how the data are used.

At CIHI, we manage some 21 data holdings. Nine of the holdings are related to health human resources and health expenditures and do not contain personal health information. The balance are related to health services and include holdings such as the discharge abstract database. This is in fact our largest data holding. It predates the formation of CIHI. It is collected from hospitals and is comprised of basic data on the causes of the hospitalization, procedures performed and length of stay. It is used to produce national comparative hospital stay reports. These reports allow hospitals to compare their activity to similar sized hospitals across the country. Because of its historical base and comprehensiveness, it is valuable for studying trends in hospital utilization.

Another good example is the national ambulatory care reporting system. This data holding captures data from emergency rooms and outpatient departments, where, as you know, more procedures are now being performed. You may recall that in the summer of 2003 there was a debate that erupted as to the dangers of body checking in minor hockey. Data from this holding provided some important facts as to the number of people who visit emergency rooms each year in Ontario due to hockey injuries. The data showed that the main cause of injury was body checking and that it particularly affected players under the age of 17.

My last example is the Canadian organ replacement registry. The registry tracks trends in renal dialysis and organ transplantation, including patient survival rates of individuals with organ transplants and dialysis. For example, our 2003 report showed that over time, outcomes for lung transplants are improving.

These holdings and the reliability of the associated analyses depend on the continued flow of defined sets of health information from many sources, primarily health facilities, to CIHI. The holdings include data elements determined by advisory groups to be necessary for health services utilization and outcome analysis.

Once we receive the data, it's processed, data quality measures are applied and it's stored for reporting and

analytical use at CIHI. Only a limited number of analysts have access to data holdings, and access authorizations are reviewed regularly. We also have developed programs in place that mask personal health numbers and specific sensitive data elements from the analysts.

CIHI also discloses data to external researchers, many of whom are associated with academic institutions or organizations, such as the Institute for Clinical Evaluative Sciences, ICES. In these cases, consistent with CIHI policy, the data are de-identified before the disclosure and research agreements are signed that address use, retention, publication and confidentiality of the data.

CIHI also discloses identifiable information when it is permitted to under an act. For example, identifiable information is disclosed to Cancer Care Ontario for the purpose of the Ontario Cancer Registry under the Cancer Act. A data-sharing agreement guides this disclosure.

CIHI takes privacy and data protection extremely seriously. The institute recognized at the outset that to be successful it not only had to provide objective, valuable and reliable information but also that it was critical to address privacy, confidentiality and security matters. As such, shortly after its establishment, CIHI put in place privacy principles based on the CSA model code to guide its operations. It also included in its bilateral agreements with Ministries of Health a commitment to abide by relevant health and privacy legislation in respective jurisdictions. Attention to these principles has produced a privacy program that is considered to be one of the best in the field and has led to a culture of privacy at CIHI. We are pleased to be able to say that in our years of operation we have not had a single privacy breach.

As I turn my attention to comments on the bill, first, CIHI is pleased with many parts of the bill. Two which I should mention are research and oversight. We are pleased that the bill includes a definition of research, as well as a list of permitted uses of data outlined in section 36 of the act. This will assist us in determining what activities are subject to the research requirements as set out in section 43. CIHI also supports the requirements set out in section 43, for example, that researchers who wish to use identifiable personal health information must submit a research plan and obtain the approval of a research ethics board. These requirements are similar to those CIHI has in place for access to de-identified data.

As well, CIHI welcomes the designation of the Ontario Information and Privacy Commissioner's office as an experienced entity to perform the oversight function with respect to the personal health information of Ontarians.

At the same time, there are two aspects of the bill on which we would like to make some recommendations.

The first aspect is in relation to CIHI's designation under the bill. Subsection 36(1) lists the permitted uses for personal health information by a health information custodian. This list encompasses most of CIHI's functions, but CIHI is not included in the list of health information custodians set out in subsection 3(1). Although subsection 3(1), paragraph 7, makes allowance



for other persons to be prescribed as custodians, because CIHI has no direct relationship with a patient, it is unlikely CIHI could comply with the obligations of the custodian designation. As such, for CIHI to carry out its functions, it must be under a designation other than custodian.

To this end, we reviewed the health data institute designation. However, it appears to be intended for the minister to undertake specific research projects as opposed to the wide program of work under CIHI's mandate, and it clearly indicates in clause 45(15)(f) that the minister can control the release of research findings. Such a limitation would be contrary to CIHI's role of an objective and independent provider of health information.

Subsection 36(2) permits a custodian to provide information to an agent, who may use it in the same manner as would the custodian. "Agent" is defined in section 2 as "a person that, with the authorization of the custodian, acts for or on behalf of the custodian." Under this arrangement, CIHI would need to establish an agent relationship with each facility in order to access the data. Given the many facilities that we deal with, this is potentially an unmanageable situation.

You should know that today CIHI receives the vast majority of its data under regulation 23 of the Public Hospitals Act. That regulation states that when a hospital is requested to do so by the minister, it shall provide information "to a person for purposes of information and data collection, organization and analysis." This would suggest to us that one possible solution would be to establish CIHI as a specially designated agent or organization of the ministry, possibly in regulation.

1140

Based on our review, a type of agent could be established in Bill 31 similar to the "information manager" designation in Alberta and Manitoba. Based on our experience in both of these provinces, such a designation with a limited number of parties is workable.

CIHI has discussed this as a possible solution with representatives of the Ministry of Health and Long-Term Care, and we look forward to continuing working with them to this end.

My second concern is in relation to disclosures related to out-of-province patients. As you may be aware, patients from other provinces and territories come to Ontario for health procedures. It is important for the home jurisdictions to receive information on the services their residents are receiving elsewhere. This helps the home jurisdiction make health policy and service decisions and is particularly important to smaller jurisdictions such as Nunavut, where residents may receive many health services from other jurisdictions.

The authority for CIHI to be able to disclose this information back to the home jurisdiction is not abundantly clear in the bill. Currently section 48 permits disclosures outside of Ontario for the administration of payments only, as we understand it. CIHI would request that the section be revisited and consideration given to an amendment that would clearly permit this limited type of

disclosure to be made regarding out-of-province patients for the purpose of health services utilization analysis.

In closing, I would like to reiterate that CIHI supports the intent of Bill 31. We look forward to legislation in Ontario that provides a framework for the protection and oversight of personal health information in Ontario. I believe this bill provides such a framework.

We also believe the comments we have made are necessary to facilitate the smooth functioning of the health information system. We look forward to working with representatives from the ministry to address our concerns.

In the meantime, I'd like to assure you that until personal health information legislation or some other form of legislation is in place, CIHI will continue to apply its robust privacy protection program.

Once again, I'd like to thank this standing committee for the opportunity to make this oral presentation. We will be making a written submission outlining our suggestions in more detail. Thank you.

**Mr Fonseca:** The Ministry of Health and Long-Term Care thanks you very much for the great work you've done for this province, and we're taking into account the recommendations you've brought forward.

One recommendation was around the designation of CIHI. If you were designated as a data institute, would this address the concerns you have brought out?

**Mr Alvarez:** I don't think so. I'm going to leave it to my chief privacy officer to explain why it's restrictive.

**Ms Joan Roch:** I understand from the way the health data institute is structured right now that a lot of powers rest with the minister and that it is for specific research programs only. He does have the power to restrict disclosure of the outcomes of that research, even if they are de-identified. It says, "even in de-identified form." One of CIHI's basic roles is to disseminate de-identified information for purposes of health utilization information. So that would be contrary to what we do, and it doesn't satisfy our need to provide a larger program of work. We do more than just specific research projects. Is that helpful?

**Mr Fonseca:** That does help.

**Mrs Witmer:** Thank you very much for your presentation. I've always appreciated the work CIHI has undertaken.

You are suggesting, then, that you would like to be given a designation that would be similar to what we have in Alberta and Manitoba, and that would be "information manager"?

**Mr Alvarez:** An information manager, and it could be accommodated, I suspect, in the regulations.

**Mrs Witmer:** That has solved the problem in those two provinces?

**Mr Alvarez:** It certainly has for us. In the agreements we have with them, it seems to have solved the problems. It takes into account the variety of work we have and does not interfere with our objectivity and independence, which is really important.

**Mrs Witmer:** Yes, for sure. That's the basis of everything that you do.

You talk about the disclosures that are going to be required for out-of-province patients. For the purposes of health services utilization analysis, what type of information do you want to be able to communicate to other jurisdictions, such as Nunavut?

**Mr Alvarez:** It would basically be the information we collect under the discharge abstract from hospitals. Nunavut, for example, needs to know how many of their patients got services in Ontario, for what types of conditions, what were the diagnoses. It's that type of information. They're less concerned about who it was; they're more concerned about the numbers and what actually happened to them. A similar thing would apply to Ontario as well if Ontario patients travel outside the province.

**Mrs Witmer:** And so at the present time that's not possible?

**Mr Alvarez:** At the present time, the way this bill is structured, it's not possible.

**Mrs Witmer:** Thank you very much.

**Ms Martel:** Thank you for being here this morning. I want to follow up on the request for a designation of information manager and be clear about something. If we were to define "information manager" in the definition section, would that solve the problem, or would there be other parts in the bill that then have to be amended around mandate and role?

**Ms Roch:** I think that would go part way to solving the problem. One of the key elements in the manager arrangement would be the need to establish an agreement which would specifically outline the kinds of roles we undertake on behalf of the ministry and would include our national reporting responsibility, which we don't think is possible with the existing agent designation. However, I'm not a legal draftsman, so perhaps some work could be done to the "agent" definition as well; I'll leave that up to the drafters.

**Ms Martel:** You said you were going to be sending us another brief.

**Mr Alvarez:** A written one.

**Ms Martel:** Is it possible—because I'm not clear either on the best way to do it. There are certainly any number of definitions that could be added in. There was a request yesterday from another presentation for a similar designation and the reference to Alberta was made. I don't know what their legislation says. If it's not too much of a problem and if that's something you were going to look at anyway before you provided us the written brief, I'd appreciate that.

**Mr Alvarez:** We will do.

**The Vice-Chair:** Thank you very much for your presentation.

#### ONTARIO DENTAL ASSOCIATION

**The Vice-Chair:** The next presenters are the Ontario Dental Association.

**Dr Blake Clemes:** Good morning and thank you for this opportunity to address the standing committee on general government. I am Dr Blake Clemes, president of the Ontario Dental Association. With me today are the ODA director of government relations, Frank Bevilacqua, and Linda Samek, director of professional affairs.

The Ontario Dental Association, the ODA, is a voluntary professional organization which represents over 80% and over 6,000 of the dentists of Ontario. The ODA supports its members, is dedicated to the provision of exemplary oral health care and promotes the attainment of optimal health for the people of Ontario. The patient-practitioner relationship is based on trust, and patient confidentiality is central to the trust between regulated health care practitioners and patients. Patients expect that their health information is private and that regulated health providers will respect that confidentiality.

The ODA supports the development of provincial legislation intended to protect personal health information. Recent experiences with the application of the federal Personal Information Protection and Electronic Documents Act, PIPEDA, to the health care sector demonstrate that the federal legislation is not sensitive to the nuances of existing privacy practices within the regulated health environment in Ontario. It is the view of the ODA that the public, health care providers and others will benefit from a made-in-Ontario solution to some of the issues and confusions raised by PIPEDA.

While the ODA generally supports this provincial approach to the protection of personal health information, it is our view that the legislation is complex. Consequently, there are areas of the legislative draft that require greater clarification and other sections that require revisions to ensure that disclosures of personal health information serve the interests of the patient while balancing the responsibilities and accountabilities of the regulated health care provider.

Let me start with a question about the clarity of the definition of "health care." The definition outlined in Bill 31 does not include the term "assess." It is not clear that the use of the word "assessment" in the preamble to the listed health-related purposes is sufficient to ensure consistency between Bill 31 and the existing Regulated Health Professions Act. Under the RHPA, the provision of a health care diagnosis is limited to a small number of regulated health care professions and the omission of the word "assess" may be significant to the interpretation and application of the definition under the Health Information and Protection Act.

Accordingly, the ODA recommends that clause (a) of the definition be amended to read:

"Is carried out or provided to assess, diagnose, treat or maintain an individual's physical or mental condition."

#### 1150

Subsection 7(2) sets out that the proposed act will prevail in the event of a conflict between the legislative provisions of this act and the provisions of any other act or its regulations. This blanket attempt to protect against



future problems may not always serve the true interest of the public. Indeed, it is our view that there are instances where the Regulated Health Professions Act, related profession-specific acts and regulations may apply more stringent privacy protection measures. For instance, the regulations drawn under the Dentistry Act make the following an act of professional misconduct for the purposes of clause 51(1)(c) of the Health Professions Procedural Code:

“(17) Giving information about a patient to a person other than the patient or his or her authorized representative except with the consent of the patient or his or her authorized representative or as required or allowed by law.”

Considering the intent of this bill and the existing legislated framework of the RHPA, the ODA recommends that the Health Information Protection Act not be permitted to prevail over the RHPA, the related profession-specific acts and regulations. To accomplish this, an amendment should be made to Bill 31 under subsection 9(2), entitled “Non-application of the act and other rights and acts.”

Section 14 proposes that a health information custodian may keep a record of personal health information about an individual in the individual's home in any reasonable manner to which the individual consents. The ODA supports this approach, to ensure that home care is able to be provided on an ongoing basis with the use of the individual's current health information. Nonetheless, the ODA recommends that other locations, such as nursing stations and other designated centres, also be able to be used to store records of dentists who frequently provide care in this type of setting, especially in northern and remote communities. As dentistry often is provided by individual practitioners on a locum basis in these communities, it is essential that the patient records be housed in a centralized location for continuity of care by subsequent providers. This is preferable to having the health information custodian removing the records to their traditional office location for filing and safety.

The ODA understands that the definition of “health information custodian” may already capture delivery in such settings under subclause 3(1)(3)(vii): “A centre, program or service for community health or mental health whose primary purpose is the provision of health care.” The ODA raises the issue for greater clarity and certainty of the application of this section and/or to confirm the need to expand this section to capture such facilities.

The ODA supports the elements of consent outlined in section 18. The association is pleased to see that consent may be express or implied. Further, the ODA supports the provisions requiring express consent where a health information custodian makes the disclosure to a person who is not a health information custodian; or a health information custodian makes the disclosure to another health information custodian and the disclosure is not for the purposes of providing health care or assisting in providing health care.

The ODA believes that payment issues are significant and that it is important for the individual to understand what personal information is being shared with third party payers. With this in mind, the ODA recommends that the patient be required to provide express consent for the release of personal health information to insurers. This takes into consideration the practice of some insurers and claims administrators of requesting personal health information that is unnecessary for the purpose of claims processing. This recommendation is consistent with some of the key sections of the bill that refer to having the knowledge that is reasonable in the circumstances. However, given the significance of the matter, the ODA recommends that this be spelled out in the legislation.

Section 37 makes provisions for a health information custodian to disclose personal health information about an individual who is deceased or is believed to be deceased. Traditionally, provisions to release information to identify the individual are made through the use of a coroner's warrant. The ODA does not support a blanket removal of existing requirements and questions the changes introduced in subsection 37(4). However, the ODA recognizes that there are related compassionate and practical reasons or to expedite the identification process in the case of official missing persons.

While the ODA recommends using the shortest possible list of exceptions, the ODA proposes the inclusion of a specific disclosure. The ODA believes that dentists could be more active in assisting in the identification of deceased individuals who may be listed as missing persons. There is a national police computer system, CPIC—the Canadian Police Information Centre—that can be used in the identification of bodies through the odontograms of an individual. If dentists were permitted to release to police a simple pictorial drawing indicating by tooth position missing, decayed and filled teeth of an individual who has been officially declared to be missing, we believe that more deceased individuals could be identified more quickly.

We recommend that the legislation be amended to allow dentists to release the odontogram of an individual who has been reported to the police as being missing for 30 days, where the spouse, partner or relative, within the meaning of an appropriate substitute decision-maker, approves the release of the odontogram of the missing person to the police solely to be placed on CPIC computer files. In the past, the ODA met with Dr James Young on this matter on a number of occasions. This new legislation provides an important opportunity to address this outstanding issue of identification of deceased individuals, who are presumed missing, through odontograms.

Section 43 proposes to permit disclosures for research purposes, where, in part, there is a decision of a research ethics board that approves the research plan. While admirable, this section does not appear to go far enough to adequately protect personal health information.

As noted in earlier consultations, the ODA supports consent-based research. The current proposal relies on a



research ethics board, and the ODA agrees that the use of such a board is a fundamental requirement to bring balance to the research process. However, the steps to be taken by the research ethics board permit variability in the application of the research process. Indeed, the ODA is not aware of the application of common protocols related to the formation of research ethics boards, and this introduces fundamental variables into the use of personal information for research purposes.

Patients seeking information about agreeing to participate in research have no registry to turn to to see if the board in question meets established criteria. Bill 31 introduces decision-making options for the health information custodian, who may apply additional restrictions and conditions to the release of information. There is no common framework for the custodian to use in making such decisions, and this limitation would introduce variability within a single research project that requires records from multiple custodians. The ODA recommends careful review of this section to ensure consistency through a common research framework.

Section 45 refers to de-identifying personal health information. The ODA believes it is essential to de-identify any information being forwarded to a data institute approved by the ministry. Further, to protect the privacy of individuals, the data must remain separate and distinct, protecting against the relinking of the data with the personal identifiers of an individual. Based on this, personal identifiers should be removed prior to submission to the health institute that may be approved under this section. Without including appropriate privacy protections, the ministry would be condoning unconsented research.

The ODA supports provisions outlined in subsection 53(9) to have professional opinion or observations made in good faith excepted from the proposed correction requirements. This is exactly the type of personal information that might come into dispute but should not be changed simply because the patient does not agree with the professional opinion and observation of the practitioner. Here again, the ODA believes that giving precedence to the Regulated Health Professions Act, the related profession-specific acts and regulations will serve to protect patients and the regulatory process that requires that health records not be altered.

Clause 58(1)(c) provides the commission with the right to conduct a review under sections 55 or 56 and to permit the inspector to enter without a warrant or a court order, even where the inspector does not have reasonable grounds to believe that a person has committed an offence. Further, the inspector is able to copy any books, records or documents. These broad powers are disturbing and serve as another indication of the continual erosion of the role of self-regulatory bodies within the Regulated Health Professions Act.

Indeed, clause 60(3)(d) recognizes that other bodies may be legally entitled to regulate or view the activities of a health information custodian. The ODA believes that this should be recognized at the front end of the process,

rather than after the issuing of an order. Ensuring that the RHPA, the related profession-specific acts and regulations prevail where there is a conflict and acknowledging the role of the regulatory colleges within this bill will serve the public and the professions while providing important privacy protections of personal health information.

To conclude, the ODA will provide the committee with a more detailed submission on the bill in the next few days. To briefly summarize some of our key discussions this morning, the ODA seeks consistency with the RHPA in the definition of health care; recommends that the Regulated Health Professions Act, the related profession-specific acts and regulations take primacy over the Health Information Protection Act; seeks clarification that dental records can be retained at a nursing station or other designated centres, especially in northern and remote communities, to ensure continuity of care; recommends the need for a framework for the establishment and operation of research ethics boards; and recommends that the legislation permit the release of odontograms in an effort to identify deceased individuals who are presumed missing.

Thank you again for the opportunity to speak on the important issue of protecting personal health information.  
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**Mrs Witmer:** Thank you very much, Dr Clemes, for a very thorough and good presentation. You've raised a few issues that are similar to what some of the other health professionals have brought to our attention, but at the same time you've actually identified some other areas where we need to look at making amendments.

I guess where there is unilateral agreement is in the need for the Regulated Health Professions Act to take primacy. Again, you have pointed out some of the shortcomings if this doesn't happen.

I guess one of the new points that you brought to our attention today is the fact that dental records need to be retained at a nursing station or other designated centres. How widespread is that need? You referred to northern and remote communities.

**Dr Clemes:** I'll have Frank Bevilacqua answer that.

**Mr Frank Bevilacqua:** It's fairly common. We, on behalf of the federal government, run a remote areas program where we fly dentists into remote communities throughout northwestern Ontario. There is a similar program that operates out of Moose Factory. Dentists go into the communities all the way up the coast there. Generally speaking, there is some sort of a facility on the reserves. Some of them are buildings, essentially, and often dentistry is even done in an empty room with portable equipment that's set up. Records are retained on-site usually at these nursing stations. In terms of those communities, there are a fair number of them across the north. We certainly would want to make sure that the records could be safely kept in that environment so that when a locum dentist does come up, the previous treatment history for that community is there and readily available.



**Mrs Witmer:** Thank you very much. I look forward to getting your more detailed submission.

**Ms Martel:** I just wanted to ask a question with respect to missing persons and your recommendation for an amendment that would allow the release of odontograms. I know we have another brief coming in from you that might be more specific, but can you give me a sense of where in the legislation that change would have to come into effect in order for that to happen?

**Ms Linda Samek:** We certainly need to look at that in more detail. I think we had two concerns here. One was that there seemed to be a general change in direction to simply allow records to be released. We think that may be a bit too broad. So in that section, we were looking at trying to make a specific area where you look at something like the release of these odontograms for CPIC only. We think that would be very helpful. We can certainly give you a little more look at that, but it's kind of that balance. I think the approach tried to look at this type of thing, but it was too broad. What we're saying is that we need to be very specific about when you're going to do things without having the proper warrants and protections behind it.

**Mr Fonseca:** I thank the ODA for your presentation and recommendations. One of your concerns was around the word "assess." In the definitions, we have health care defined as "means any observation, examination, assessment, care, service or procedure that is done for a health-related purpose." Does that not suffice?

**Ms Samek:** We weren't clear that it was, because you turn around and say it's done for these things, and it doesn't say it's done to assess something. We see it in a preamble, but then it gives a list of specifics, and it's not clear for us that it's captured. We just needed to have some conversation and clarity around it.

**The Vice-Chair:** Thank you for your presentation.

#### ST MICHAEL'S HOSPITAL

**The Vice-Chair:** The next group is St Michael's Hospital.

**The Acting Chair (Mr Lorenzo Berardinetti):** Good afternoon. Please go ahead.

**Mr Peter Lambert:** I appreciate the opportunity to speak with you today on this important matter, the Health Information Protection Act. By way of introduction, as manager of information security at St Michael's Hospital in Toronto, I am the privacy point person at that hospital. With me today are Patricia McKernan, the chair of our privacy and security committee, and Naomi Margo, our general counsel. Pat and Naomi will assist me in addressing any questions you may have.

In speaking with you today, I have three goals: to tell you a bit about St Michael's so that you'll understand our perspective on the act, to outline in summary fashion our views to date on the bill, and to identify key changes we believe are needed and the reasons for these.

First, a little bit about St Michael's: We are a major teaching and research hospital located in downtown

Toronto. Human dignity is one of our core values. We value each person as a unique individual with the right to be accepted and respected. We therefore have a natural and compelling interest in protecting the privacy of patient information as an important part of showing respect for individuals. At St Michael's, protecting privacy is an integral part of patient care.

St Michael's provides primary and secondary care to an immediate catchment area in downtown Toronto and is a major tertiary and quaternary referral centre for patients from Toronto and across Ontario. The local community is ethnically, culturally and economically diverse and is home to Canada's largest lesbian and gay community. Our governance structure includes community advisory panels on the homeless and underhoused, women at risk, people with HIV/AIDS and those who are severely mentally ill.

Every day, we deal with privacy issues of the most sensitive kind. In 2001, based on the fair information principles that underlie most privacy legislation, St Michael's developed comprehensive policies and procedures for the protection of personal health information. In this work, we strove to adapt the fair information principles to a hospital setting, an adaptation not unlike that pursued in Bill 31. The framework of protection thus created is similar to that apparent in the bill, so we feel our experience to date may represent a valuable preview of applying the proposed legislation, and our observations and suggestions flow in part from that experience.

A summary of our views on the bill: We strongly support the intent of this legislation. Such law can and must play a crucial role in protecting the privacy of personal health information for the people of Ontario by creating a legal framework within which patients and health care providers alike can be assured that individual privacy will be respected. Because this law is the first law in Ontario that substantially addresses privacy of health information in a modern setting, it addresses an important and pressing need.

St Michael's recognizes the sustained and difficult work by a wide range of stakeholders that has gone into the development of this bill and strongly supports the result of that work and its broad outline: designated health information custodians being accountable for protecting patient information; open with patients about how their information is used and protected; and operating largely on the basis of implied consent with notice. This is essentially the framework that we have adopted at St Michael's and it strikes us as one that is both effective and practical.

However, we do have concerns about the bill as drafted. Though the framework is strong, we believe that in a few key areas, changes are needed in order to prevent the bill's effectiveness from being seriously undermined. The areas I will highlight today are express consent for fundraising and the lockbox provisions. We do have other concerns as well, such as permissible disclosures in certain cases where the patient may be incapable or unconscious at the time, the general impact



of the bill on our own day-to-day dealings with the police, concerns about certain research provisions and about the proposed pace of implementation. Our written submission will expand upon those points.

As written, the bill's requirement for express consent for fundraising threatens the capacity of hospitals to raise money needed to support patient care. Hospital foundations play an integral role in raising funds for equipment and facilities essential to care. At St Michael's alone, over the past three years, the foundation has raised close to \$40 million for vital projects. Foundations find the money not only for equipment and facilities but also for renovations, scholarships, education research chairs and fellowships. Such renewal and modernization are important to enabling hospitals to attract and retain high-calibre staff.

#### 1210

Today hospital capital projects are typically funded on a matching-funds basis, with local foundations raising half the cost of major projects and the government requiring this local fundraising as a prerequisite for its own contribution. In this arrangement, government correctly recognizes the vital contribution of foundations, without which the full burden of funding would fall to government. Foundations are the main vehicle by which the communities themselves, whether a geographic community or a community of interest, may contribute to, participate in and support local hospital development.

Foundations not only play an integral role in local health care delivery, but also in province-wide health care delivery. For example, the funding of research chairs helps create in Ontario a pool of expert health care knowledge that is globally competitive—a reverse brain drain, if you will. For example, with the University of Toronto, St Michael's created in the year 2003 the first ever nursing chair in women's health.

Foundations share values and goals with their hospitals. They typically manage professionally with established codes of ethics and excellent track records in terms of demonstrating respect for patient privacy. Respecting patient privacy is not only good for the foundations from an ethical perspective, it is necessary for building long-term relationships upon which effective hospital fundraising depends.

A requirement for express consent will put hospital fundraising at a distinct disadvantage relative to fundraisers outside of health care who would not be subject to a similar requirement, and where an express consent model has been tried it has curtailed fundraising effectiveness drastically.

Finally, I would point out that in the bill disclosure of some personal health information to government is justified, and reasonably so, on the basis that the disclosure is needed to support the business of health care; for example, by preventing billing fraud. A similar justification can, and should, be extended to foundations. An opt-out model for fundraising, on the other hand, can substantially preserve for the individual his or her opportunity to control the use of personal information,

that is, preserve his or her privacy, while at the same time allowing effective fundraising to continue. Moreover, with an opt-out model there is the opportunity to eliminate the possibility of coercion in fundraising and to reduce the potential for nuisance contacts with individuals.

A second area of serious concern to St Michael's is found in the lockbox provisions that enable a patient to specify that some or all of their personal health information is to be excluded from the normal flow of patient data among health information custodians. In the current health care environment, implementing these provisions as drafted will be very impractical and on occasion may place patient care at risk. If a patient specifies certain items are to be placed in the lockbox, a gap is immediately created in the completeness of the patient record that is readily available to caregivers. This is at variance with best practice in health care today, where a major goal is to ensure that as complete a record as possible is readily available to a caregiver at the point of care and at the time of care.

The health care system in Ontario and elsewhere strives in this direction for a very good reason. Optimal diagnosis, care and treatment rely directly on having as much relevant clinical information as possible available at the point of care. The quality of care delivered depends directly on this, as does the cost of care. For example, unless a physician has full access to test results previously obtained, he or she is likely to order the tests again, incurring unnecessary costs and possibly creating risk to the patient.

As another example, in an emergency or urgent care situation the inability of caregivers to access all relevant information may seriously affect outcomes. Is that patient taking certain medications which may interact with drugs about to be administered? Does the patient have a pre-existing condition that would dictate or preclude the use of certain treatments? In a pregnancy, should a Caesarean section be ordered because the patient has predisposing risk factors, such as hypertension or a psychiatric illness?

Lockbox provisions potentially shift the onus on to the patient to determine the relevance to their future care and treatment of the information locked up. Unfortunately, most patients are not in a position to judge that relevance. For example, whether one has had a previous pregnancy may determine the correct course of treatment for an apparently unrelated illness years later. Even honouring patient requests to place information in a lockbox would be problematic. For example, if a patient asked to have the fact that he or she has AIDS suppressed, multiple changes would potentially need to be made to multiple records, extensive narrative notes might have to be reread in order to do the relevant necessary editing.

It may be intended in the bill that in a medical emergency or an urgent care situation or a situation where the patient is incapable of authorizing disclosure of the locked information that a caregiver might override the lockbox provision. However, the mechanisms for making sure this works in a timely way have not been spelled out



and would be difficult, if not impossible, to operationalize if, for example, non-digital records were involved, as they often are.

To make lockbox provisions into law is to create an unrealistic expectation on the part of the public and an unrealistic demand on health care providers. Individual providers would potentially be put in the position of having a conflict of interest between honouring a lockbox provision and ensuring proper care for the patient.

In short, a lockbox provision in the current Ontario health care environment is just not practical when it comes to implementation. At some future time, perhaps when and as Ontario moves to a fully digital patient record, the lockbox idea could be revisited. It is really something that can only be operationalized in a fully computerized setting, and even then, all the real-life scenarios would need to be carefully accounted for and tested out before implementation. Until then, a lockbox provision is impractical and inadvisable. The bill already includes many other provisions to ensure that custodians properly control access to patient data.

In conclusion, the time has come for a modern Ontario law to protect personal health information, and Bill 31, with some key changes as suggested here and outlined in our written submission to follow, will serve custodians, Ontarians and their government well. Thank you.

**The Vice-Chair:** Thank you very much. We'll start with Ms Martel.

**Ms Martel:** Thank you very much for your presentation. As you will appreciate, we've heard from a number of presenters from the hospital sector about these two similar concerns. For clarification purposes on this second provision, which is the lockbox, if you look at section 39 of the bill, which would be a disclosure related to risk, does that give you any comfort that in the areas you've identified there would be disclosure when it's necessary, or is it just too uncertain, especially for health care providers, to work with a section like that?

**Mr Lambert:** I think the number and variety of situations that will come up in the context of trying to make a lockbox work are too many to try to consider within the framework of the current legislation. I think section 39 does help in a specific set of situations but not all of them.

**Ms Martel:** Then, your concern would be that people making decisions about whether or not to comply and how would put patient care at risk in any number of circumstances?

**Mr Lambert:** And in addition, it may put the actual care provider in a very difficult situation where, for example, the care provider who participates with the patient in collecting the information then possesses that information for a long time and in a way is perpetually faced with the prospect that the information they hold may be relevant to subsequent care and yet be constrained from doing much about it.

**Ms Martel:** OK. Thank you.

**Mr Fonseca:** Thank you, St Michael's, for your presentation. In regard to the fundraising issue that you

brought up, have you experimented with or ever tried different models in terms of asking for consent?

**Mr Lambert:** In the past few years, the model that we have largely used at the hospital has been a different model, which involves a two-step process: A letter goes from the hospital and basically presents the benefits to the patient and then gives them the opportunity to connect with the foundation. That is the basis of what we do to date. It has worked very well in terms of having, to my knowledge, no complaints associated with it at all. However, we do know that in fundraising in the future, the opportunity to offer people more opportunities to contribute is a real prospect that we ought to be pursuing.

1220

**Mr Fonseca:** So the model that you're using is one where you send out a letter to a former patient, and that patient then—what would the letter entail?

**Mr Lambert:** It essentially makes them acquainted with the existence of the foundation. So it goes from the hospital, and it describes in general terms what the foundation is about. It gives them the opportunity to mail in to the foundation if they want to deal with them further.

**Mr Fonseca:** Are they being solicited right away with that first letter?

**Mr Lambert:** I think that is a matter of interpretation. It is not a solicitation by the foundation.

**Mr Fonseca:** Are you asking for funds in that letter?

**Mr Lambert:** Not directly. We give the patient the opportunity to fill out a form if they wish to talk to the foundation or make a contribution to the foundation. But the contribution itself flows separately to the foundation.

**Mr Fonseca:** Is this a model that is being used pretty much across Ontario at the different hospitals or is everybody using a different model?

**Mr Lambert:** I think there is a variety of models. Many of the hospitals, as I understand it, do have their foundation contact people directly and ask for donations but provide opt-out opportunities.

**Ms Naomi Margo:** I think we've also seen on the original consent form, when you attend at a hospital, an implied consent to share identity and address with the foundation; so doing it upfront upon admission.

**Mr Fonseca:** How has that worked?

**Ms Margo:** I can't speak on behalf of other hospitals. I don't know if they've encountered anything. You asked about what other hospitals are doing.

**Mr Fonseca:** You're not doing that?

**Ms Margo:** We're not doing that. Other hospitals sometimes go that route.

**The Vice-Chair:** Ms Wynne, just very quickly.

**Ms Wynne:** In the absence of Bill 31 and this lockbox provision, what happens now when a patient doesn't want information disclosed? What's the St Michael's practice?

**Mr Lambert:** I think it's fair to say we make best efforts to comply with their request. Those efforts are not always successful. They're frustrated by practical realities, the fact that we cannot and do not control, for



example, every conceivable use of each piece of data piece by piece, patient by patient, through their subsequent cycles of care. We don't essentially have the systems to be able to do that yet—someday we may—and I don't believe many hospitals really have the systems to do that.

**Ms Wynne:** But I guess that's what the bill envisions, a time when we can. That's what's desirable, that's what could happen.

**Mr Lambert:** I believe the bill does envision that. What concerns us is the immediate casting into implementation of it.

**Ms Wynne:** OK. Thank you.

**The Vice-Chair:** Thank you very much for your presentation.

**Mrs Van Bommel:** John didn't get—there's one more.

**The Vice-Chair:** My apologies, Mr Yakabuski.

**Mrs Van Bommel:** The third party. Oh, no.

**Mr Yakabuski:** The fourth party, maybe. Let's party.

Thank you very much for your presentation. I certainly share your concerns on the fundraising front. I think a lot has changed over the years. I think there's still a large segment of the population out there that does not realize how much money is generated for hospitals through private fundraising. We've become a little more aware of it by getting the Princess Margaret and CHEO and things like that in the mail for the house and the cars, which is good. But I think a lot of people still think that everything associated with health care is paid for by the government and don't realize that the institutions they use do rely on personal donations as well. So I certainly share your concerns in that regard, and I hope that some amendments can be made and that without hamstringing your ability to function as foundations, we can still protect the privacy rights of individuals. I think the opting-out clause is certainly something worth looking at.

I'm looking at section 39 with regard to the lockbox. Maybe you have looked at it a little more closely, but in the case of someone who has changed physicians for whatever reason, hypothetically has changed physicians three or four times, if they locked the box at physician number one and they're now a patient of physician number four and they need some specialized treatment or whatever, I'm not sure what kind of continuity is involved there. You people in the health care field would be able to enlighten me more. If you're only going one step back, that box couldn't be opened because it wouldn't be realized it was locked. Is that a realistic question?

**Mr Lambert:** I'd think very realistic in this way, that the whole notion of continuity of care, which of course is very important to patients and their care providers, is premised on the idea that the information is readily and consistently available across all those providers. In fact, as we move more and more to the delivery of health care in teams, whether it be teams of nurses or teams of physicians, it becomes very complex to even understand how one would operate the lockbox in those cases.

**The Vice-Chair:** Thank you very much, Mr Lambert.

**Ms Wynne:** I don't know if I need to make a motion, but I'd like to move back into the discussion of the travel. I wanted to speak to that. Can I speak to that?

**The Vice-Chair:** That's fine.

**Ms Wynne:** I wanted to make a couple of points. First of all, I am new to this side of the table in these committee hearings, but I'm not new to the other side of the table. I just wanted to make the point that I have spent a lot of time in committee meetings as a presenter, as somebody following committee hearings. I travelled around the province during the last government's regime and you really hear different things outside of Toronto than one hears in Toronto.

The other point I wanted to make is that my understanding is that if we are in either the Soo or Kingston, if there are people who didn't know about the committee hearings and want to speak, with the consent of the committee they would be able to do that. I believe that's the case.

**The Vice-Chair:** That is the case.

**Ms Wynne:** So I think we need to be aware that it's not always the centre of everyone's mind that these hearings are going on outside of Toronto, and my expectation would be that there will be stakeholders, there will be interested parties who will want to speak to us and that we may be able to consider that. I think it's very important that we're trying to change the culture of how we do business in this province, and in terms of hearing from urban, rural, other voices, we're not going to do that if we don't have face-to-face interactions with them.

As far as the issue of finding different places to meet and cutting costs that way, that's a conversation that we should have, and certainly I personally would support looking at other kinds of meeting places than expensive hotel rooms. But I think that's another conversation. The issue of whether we travel or not is what we need to determine now. So we're trying to change the culture, and I can imagine that we could be having a conversation here today, if we weren't going to travel, accusing us of not travelling and not reaching out to people outside of Toronto. Because this is a bill that—obviously there are lots of amendments that we need to consider. We've heard some of them. We will hear more and different ones when we travel outside.

I am completely supportive of doing that and having the conversation about saving costs in other ways at a different point.

**Ms Martel:** Mr Chair, I'd like to move the motion and then speak briefly to it if I might. I have copies that Trevor was good enough to have typed up for me.

I move that given the limited number of presenters on Bill 31 in both Sault Ste Marie and Kingston, that the committee not incur substantial travel, hotel and meeting-room costs but instead ensure the participation of presenters in these two communities via teleconferencing and videoconferencing.

I think members are receiving copies of the motion now. May I speak to that, Mr Chair?



**The Vice-Chair:** Yes, go ahead.

**Ms Martel:** A couple of things: We've had an earlier discussion and we're continuing it, and I feel compelled to make some comments in response to the comments that were just made. There's no doubt that you do hear different things outside of Toronto, and nothing in the way of videoconferencing or teleconferencing is going to stop that. We are going to hear via a different mechanism the same presentation, the same comments, the same concerns, the same questions as we would if we were physically present on-site. I really do fail to see how operating by videoconferencing or teleconferencing in order—

**Mr Rinaldi:** On a point of order, Mr Chair: Shouldn't the motion be seconded before we speak to the motion?

1230

**Clerk of the Committee:** There's no need.

**The Vice-Chair:** Go ahead.

**Ms Martel:** There's nothing that precludes us from hearing anything—different things, good things, bad things—from presenters in either Sault Ste Marie or Kingston. We are going to hear from the presenters. The motion has nothing to do with shutting down hearings and not hearing from people. So there is every opportunity, every possibility to hear different things from people in Sault Ste Marie and Kingston via teleconferencing or audioconferencing without physically being on-site.

The second point: On rare occasions, people do come to committee who are not on the list and ask to be heard. Again, there is nothing in the process that I propose that would preclude them from doing that. If people know where the hearings are going to be, then they can come to listen and, if they want to, present, and we will certainly have time for that because we don't have a full schedule. They can certainly make the request at the time to participate.

Obviously, if we do it by teleconferencing or videoconferencing, there is going to have to be someone at the other end just coordinating that. The government's own member, who might have sat with this committee on Tuesday, may well want to do that if he was going to be there, and I suspect he would be because it was going to be in his community. But there is nothing in terms of the mechanism I propose we utilize that cuts out or dismisses or undermines an individual who wasn't on the list from coming to participate—nothing.

Third, I've been here 17 years. I've been on both sides of governments being accused about public hearings. I think what's different in this case—and I don't want to undermine my friends in the opposition now. The previous government had a very bad tradition of having very limited hearings with no opportunity for travel in the first place, so that the government motion that was put forward was very restrictive in terms of two days' hearings, very short notice, only in Toronto.

That is not what happened here. I applaud the government for ensuring that that is not what happened in this case. In this case, it was very clear that an oppor-

tunity was given, and all members of all parties accepted that there would be travel and ample time for people to participate.

The reality, and I think we have to face this, is there hasn't been overwhelming public response for people to participate. I'm not drawing any kind of inference from that, but that is the reality. At 12:30 yesterday afternoon, we had two people who wanted to present in the Soo and four in Kingston. As I said earlier, some efforts were obviously made by the government House leader's office to boost those numbers in Sault Ste Marie. That's their job; I appreciate that. I've been here a long time; I know how this works. But we are nowhere near the same circumstance with respect to public hearings as we have been in the last number of years under the Conservatives, where from the get-go, from the government motion that was passed by the majority, there was no effort for people to travel, there was no effort for people in other communities to participate. That opportunity has been given to people, and my concern is that there hasn't been really broad response from the very presenters we hoped to attract.

As a result of that, I am suggesting that we can just as easily, just as effectively openly allow presenters to have their say, doing it in a fashion that doesn't require us to be on-site. From my perspective, the response here, which has been very limited in those two communities, does not warrant the committee to be physically present in either of those two communities in order to have the give-and-take that we would like. I think that can be adequately accommodated from here. The groups that we have are groups that have made presentations before, that will not feel uncomfortable or worry about having to do it that way, and it would at the end of the day save significant costs that I don't think we should be spending.

London is a completely different matter. We have a full schedule. I think the committee should go there, but I don't think that's the same situation in either Kingston or Sault Ste Marie.

**Mr Yakubski:** I certainly support the motion of Ms Martel. I think that it is very clear that the whole point of these committee hearings is that we allow people, organizations and groups to make a submission to the committee if they feel that amendments need to be proposed or the legislation as a whole is simply not acceptable. There is nothing in her motion that limits the ability of those organizations to make those presentations. They are given every opportunity to do so via a different medium: teleconferencing. At the end of the day, the messages will still be received by this committee as to what the intentions or the concerns of those groups are, but we will have done the right thing and saved the taxpayers of Ontario a significant sum of money.

**Mr Kormos:** At Ms Martel's request, I'm not going to be overly lengthy. I appreciate her cautioning me that I shouldn't consume too much of her brief lunch period.

What did we say earlier? An hour and 20 minutes in Kingston and two hours in Sault Ste Marie, and you're going to drop tens of thousands of dollars of taxpayers'



money to fly 16 people, minimum, to those destinations, accommodate them in hotels at a minimum cost of 100 bucks a night, easy, plus the food allowance, plus whatever little travel arrangements in town. You're dropping a whole whack of taxpayers' money here for literally minutes worth of so-called consultation.

Let's put it this way, because nobody has looked at this perspective: It would be cheaper to fly all of those participants into Toronto, put them up over there at the Courtyard Marriott—it's a unionized hotel at the corner of Yonge and Wellesley—give them a food allowance of 30 or 40 bucks, and you're still saving a whole whack of dough. At the very least, it seems to me that if you were prudent managers of the public purse, you'd be interested in demonstrating some fiscal responsibility.

I say teleconferencing is the way to go. Heck, Apple has those little things for 150 bucks where you can communicate back and forth. You can go down to any computer shop—Future Shop—and buy those things. This is not high-tech stuff any more; teleconferencing is now low-tech stuff. It just rots my socks that we're seeing a government that is telling other folks out there that they're not going to see any investment from this government because there's no money, the bank account is empty, yet these guys are willing to blow all sorts of big bucks—it's not change—on travelling around to places for about an hour or two.

If you want to reach out, you've got travel budgets. You do. Go travel to Sault Ste Marie as an MPP if you want to reach out and touch someone in Sault Ste Marie or Kingston and hear what the folks are saying there, by all means, but don't ship 16-plus people on a high-ticket item where there is modest interest being displayed. You're not going to have packed committee rooms with the public clamouring to see what the exchange is going to be between these presenters and members of the committee. I think this is a very suspicious thing going on here. I'm not quite sure what's happening yet, but there's something going on here that causes me great concern and leaves me very suspicious.

I say that Ms Martel's motion demonstrates prudence and responsibility and reflects her many years of experience here at Queen's Park. People should listen. This woman is one of the senior members of this assembly. This young woman is one of the long-time, senior veterans of Queen's Park. She is the sage of the chamber, and we ought to be listening to her and adopting her direction and guidance.

I don't know, but once again I'd refer to Mr Justice Osborne's comments last week: The test is whether you want to read about it on the front page of a major newspaper the next day. You guys want to justify it? God bless. Who am I to interfere with your career goals? But I say that this is a responsible resolution and you folks should be supporting it.

1240

**Mr Berardinetti:** With the greatest respect to the senior member and her motion and the last speaker who just spoke right now, I am going to reiterate or move

again, if I have to, the motion or the decision of the subcommittee that was brought forward on the 26th.

**The Vice-Chair:** There is currently a motion on the floor.

**Mr Berardinetti:** OK, so that's on the floor. I just want to read it again, "That the committee meet for the purpose of public hearings on Bill 31 during the week of January 26, 2004, in Toronto; and during the week of February 2, 2004, in Sault Ste Marie, Kingston and London."

To make it very brief, we want to work. Back in the House in December, accusations were made by members of the third party that we were going on a three-month vacation. I don't think going to Sault Ste Marie is a vacation. I don't think going to Kingston is a vacation.

**Mr Kormos:** I don't see any sweat stains.

**Mr Berardinetti:** I haven't taken off my jacket yet.

It's the responsible thing to do. I look at the list in front of us and, again, this list can grow, but in Kingston alone, the Kingston General Hospital is listed. They have an expectation that we're going to appear there. The Ottawa Hospital is going to appear in Kingston. Those two alone are critical, and their cultures in Ottawa and Kingston are going to be somewhat different from Toronto's culture. Even the issue of fundraising, which has been brought up here in this committee with regard to Toronto hospitals, may be different in Kingston and Ottawa, and it may be different in Sault Ste Marie. The Sault Area Hospital may have different points that it wishes to raise.

With the greatest respect to members of the opposition and the third party, this Liberal government is committed to hearing from the public. Driving out to Kingston or London for a day is not that expensive. It doesn't mean you have to stay there overnight in a hotel. You can leave early in the morning and come back late at night. If Hazel McCallion does it in Mississauga, we can do it. We're all young and healthy, at least on this side of the table, and we're willing to go out to these locations.

**Ms Martel:** I can't wait to drive to the Soo.

**Mr Berardinetti:** Maybe that's the only one that requires overnight accommodation, but I could just hear the accusations on the other side. I think the third party made these accusations to the Conservatives when they were in power, that broad public consultation did not take place.

Hello. We are now entering a new period of time where we are going to consult. I think it is very important that we do travel to Kingston, Sault Ste Marie and London. We want to work; that's the bottom line. If the others don't want to work, they can moan, they can stay in Toronto and they can—no, I won't say get a job, because you already have a job—either follow us or stay here.

I will not be supporting the motion of Ms Martel, with the greatest respect to her knowledge and experience, but will reiterate subcommittee decision number 1.

**The Vice-Chair:** Any further debate?

**Ms Martel:** I'd like a recorded vote.



**The Vice-Chair:** Ms Martel moves that, given the limited number of presenters on Bill 31 in both Sault Ste Marie and Kingston, that the committee not incur substantial travel, hotel and meeting room costs but instead ensure the participation of presenters in these two communities via teleconferencing and videoconferencing.

Shall the motion carry?

### Ayes

Martel, Yakabuski.

### Nays

Berardinetti, Fonseca, Leal, Rinaldi, Van Bommel, Wynne.

**The Vice-Chair:** I declare the motion lost.

**Ms Wynne:** So then the motion that was moved by Ms Jeffrey on the first day stands, is that right?

**The Vice-Chair:** The subcommittee report stands.

**Ms Wynne:** The subcommittee report stands.

I don't know if this needs to be a motion, but I'd like to suggest that we explore ways of reducing costs. Whether it's driving or whatever the travel arrangements are, I'd like to suggest that we explore ways of reducing those costs. I don't have a problem with that at all. Does that need to be a motion or can we just ask the subcommittee to do that? Can I just ask that the subcommittee look at that?

*Interjection.*

**Ms Wynne:** Yes, so we can meet in government buildings, basically what Ms Martel was suggesting, without the full motion.

**The Vice-Chair:** Do we have agreement on that?

**Mr Kormos:** What about restricting the meal allowance to \$10 a day?

**Ms Wynne:** I don't need that much. That would be fine with me.

Can we leave this to the subcommittee to talk about? Mr Chair, can we leave this to the subcommittee, please?

**The Vice-Chair:** OK, the subcommittee will look after that. We'll recess until 1:20.

*The committee recessed from 1246 to 1327.*

**The Vice-Chair:** Order. Our next presenter was the Ombudsman of Ontario. They're not here yet. We'll have a recess for 20 minutes.

*The committee recessed from 1327 to 1346.*

## OFFICE OF THE OMBUDSMAN ONTARIO

**The Vice-Chair:** Order, please. Our next presenter is the Ombudsman of Ontario.

**Mr Clare Lewis:** Good day.

**The Vice-Chair:** You have 20 minutes. Start any time.

**Mr Lewis:** Thank you, Mr Chair, members of the committee and of the Legislature. It's a great pleasure for me to have the opportunity to be before you—maybe I'll

tell you whether that's the case after we've finished, but it certainly is a privilege. I appreciate the opportunity to address you on what I know to be your very important work.

As I stated to the standing committee considering the Personal Health Information Privacy Act, 2000, in March, 2001, "as a matter of principle I support in general terms jealous guarding of personal health information." However, I do have a specific concern regarding Bill 31 as it relates to my office.

If I can just depart from the text for a second, and the text is before you, in discussing this matter I want to say that in fairness I must make a disclaimer. I believe it is the intent of the act—that's my view as a lawyer—to allow me access for the purposes of investigations under my act, but our experience in dealing with both the health ministry and other agencies, such as the correctional institutions and so on, is that we do get blocked from time to time under the Freedom of Information and Protection of Privacy Act. I feel that we are going to be in the same position today with this act. Even if it's the intent, it may not be sufficiently clear to not impede our investigations when we have need of third party information, and it does occur and I'll try to explain that.

My problem is that if we do get impeded and it becomes serious, I may be compelled to have to go to the courts to advance my position. I think that's an unfortunate way to have to go. I have yet to have to litigate with respect to my jurisdiction and I would not like to have to do it before my end of term, which is in one year by reason of my advanced age. So I only have a year to make the rest of what I can of my office.

Under Bill 31, a health information custodian is prohibited from disclosing personal health information about an individual without that individual's consent or unless disclosure is permitted or required under the act. Non-health information custodians are also prohibited from disclosing information—that's why we get into trouble with institutions like corrections—that they have obtained from health information custodians for any purpose other than that for which the custodians disclosed it. Section 7 of the bill provides that in the event of a conflict between this act and another act, this act, Bill 31, prevails.

I have the authority to conduct investigations—and I do—relating to a broad range of provincial government organizations, many of which routinely have in their possession personal health information. These organizations include the Ministry of Health and Long-Term Care and agencies such as the Health Professions Appeal and Review Board, the Health Services Review and Appeal Board and health care units of provincial correctional facilities. It is often necessary to obtain relevant personal health information, including third party information, in the course of my investigations of provincial government organizations. Obtaining individual consent in these circumstances can be impractical and, at times, impossible.

In the past, I have conducted investigations on my own motion in order to investigate situations involving

vulnerable persons and systemic issues impacting a large group of individuals. In these circumstances, it is critical that I have full access to relevant personal health information without the need to obtain individual consent. In some contexts, for instance within the correctional system, systemic investigations relating to access to health care cannot effectively be conducted if it is necessary to obtain individual consent. I want to give you an instance Mrs Witmer may recall—it was after you were minister—the issue of Cancer Care Ontario. There was a motion investigation on the northern health travel grant, and that was a perfect case in which it could have been important for me to have obtained third party information. As it was, I was able to finesse it, but that was good luck, rather than good management. As you may know, that came to a head before a committee and ultimately some changes were made.

Bill 31 does provide in clause 42(1)(g) that a health information custodian may disclose personal health information about an individual subject to the requirements and restrictions, if any, that are prescribed, to a person carrying out an inspection, investigation or similar procedure that is authorized by a warrant or under an act of Ontario or Canada for the purpose of complying with the warrant or that act.

At first glance, this provision would appear to support the view that the act, as drafted, would permit disclosure to my office for the purpose of conducting investigations without the need for individual consent. Frankly, I do believe—this is what I referred to in my opening—that is what is intended by the section, that the Ombudsman should not be precluded from having access in appropriate circumstances. However, my office's past experience with FIPPA suggests that further clarification would certainly be useful if not required, and may be required.

FIPPA was amended in January of 1991 to delete reference to the Ombudsman's office in a section permitting disclosure of personal information for certain purposes. The reference to my office was considered redundant, in light of the general exemption in the legislation authorizing disclosure for the purpose of complying with an act of the Legislature. That has had serious impacts on our capacity to do our investigations despite a memorandum from the director of the freedom of information and privacy branch of Management Board of Cabinet in November of 1991, which confirmed that the Ombudsman continued to be authorized to require access to personal information. Further, in June of 1992, the Information and Privacy Commissioner, then an assistant commissioner, responded to a complaint concerning disclosure of personal information to my office by finding that the disclosure was permitted under FIPPA.

Despite the information from Management Board of Cabinet and from the Information and Privacy Commissioner's office, I continue to experience resistance when attempting to obtain access to information, particularly personal health information, without formal written consent from the individuals to whom it relates. It is a credit to those individuals who resist my requests that

they are attempting to follow the rules and exercise due caution, but I think they do so incorrectly and based on a misconception of the law.

Unless this act clearly refers to disclosure to the Ombudsman being permitted and there is no room for ambiguity, I foresee, based on my office's past experience since 1991, that I will face resistance in my investigations, and delay, when attempting to obtain personal health information.

Bill 31 recognizes that to ensure compliance with the legislation, the Information and Privacy Commissioner must have inspection powers. However, I echo her submissions to this committee yesterday, that for effective oversight the commissioner must be able to compel testimony and access personal health information without the procedural requirement of obtaining a warrant. It's not for me to argue her case. She did so quite well. But in order to fulfill my mandate properly, I have been given broad statutory powers of investigation. I suggest, respectfully, that it is fundamental that I continue to have full access to such information in order to fulfil my role and ensure that government is accountable in its administration. I am concerned that my authority will be restricted as a practical result of the implementation of this act.

I would like to assure the committee that I appreciate the sensitivity relating to personal health information. If I can get personal, my wife is vice-president of the Trillium Health Centre and she doesn't think anybody should have access to anything at any time, including me, but I don't think that's quite true. I have my own jurisdictions.

It's important to realize that the Ombudsman Act and its regulations contain strong confidentiality provisions to ensure that information obtained in my investigation is not unnecessarily disclosed. I took an oath of confidentiality when assuming office in accordance with subsection 12(1) of the Ombudsman Act. Every member of my staff is bound by my obligations of confidentiality. My act requires that my investigations are conducted in private, and section 2 of the regulation provides that neither my staff nor I can disclose information to third parties except when permitted by the act.

My office—and this is important—is also not an institution subject to FIPPA. Accordingly, members of the public cannot obtain disclosure of information within my custody and control through an access request to my office under FIPPA.

In our complex and changing society, it is important to have clear rules respecting the privacy of personal health information. It is also important to ensure that government administration is held accountable both for its use of such information and for its conduct generally. My concern is that the proposed legislation may have the unintended effect of impairing my ability to conduct investigations of provincial government organizations in some circumstances.

I believe it is necessary that PHIPA expressly provide that a health information custodian or non-health infor-



mation custodian who has obtained personal health information may disclose personal health information without consent to the Ombudsman for the purpose of allowing me to carry out the investigations under the act. The best way to accomplish this, in my view, is to add a separate section to the legislation in part I, under the application of the act, stating, "Nothing in this act shall apply to prevent or restrict disclosure of personal health information to the Ombudsman of Ontario."

Alternatively, the standing committee may wish to consider recommending a consequential amendment to the Ombudsman Act clarifying that FIPPA and PHIPA—this act—do not prevent me from obtaining personal information and personal health information during the course of my investigations.

Subsection 19(3) of the Ombudsman Act could be amended by deleting it and replacing it with the following, and I set out what I propose:

"Subject to subsection (4), no person who is bound by the provisions of any act, other than the Public Service Act, Freedom of Information and Protection of Privacy Act or the Personal Health Information Privacy Act, 2003, to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any question put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure."

I believe the confidentiality provisions in the Ombudsman Act and the integrity of my investigative process strike a balance between the public interest in having an Ombudsman with the right to access personal health information and the private interests of individuals in having their personal health information protected. I believe PHIPA intends to preserve that balance.

However, as I pointed out, my experience has shown that in the very sensitive area of personal health information—and as recently as this week, the coroner's office's hesitation to provide me with information of a proper investigation, and understandably so—any legislative uncertainty will inevitably lead to challenges to my investigative authority.

I thank you for your consideration of the matters I have raised. I would be pleased to answer any questions, and I'd like to introduce Ms Laura Pettigrew, my senior counsel, who has been of great assistance to me on this issue for several years.

I would just like to explain one reason why I think I do have the right under the act. I think the section that proposes that it could be disclosed for purposes of an investigation under an act of Ontario provides me with that right. The problem is that the section in my act, under subsection 19(3), which appears to give persons who are bound by a secrecy provision the right not to respond to me—I don't think a health custodian under this act is bound to a secrecy provision, but I know it's going to be argued that they are, and I don't want to have to go to court if I don't have to. That's not a threat. I think it's unnecessary.

There's one thing I wanted to mention. Like the Information and Privacy Commissioner, our office works very quickly and informally on most of our work; 75% of our matters are disposed of within three weeks. We've got some very terrible tales, like any other office, but we really do move quickly, and we informally resolve, mediate and get rid of matters quickly and effectively. That doesn't happen when people dig in and say, "We don't think this is going to work; we haven't got the right," and so on and so forth.

I apologize that it's a little long, but thank you for hearing me.

1400

**The Vice-Chair:** Thank you for your presentation.

**Mr Leal:** Mr Lewis, thank you very much. A question as a new member, just for my own clarification: On page 2 you talked about a decision that was made to amend FIPPA back on January 1, 1991, and that your interest was declared redundant at that time. Why was that put in there back then?

**Mr Lewis:** Why was subsection 19(3) put in?

**Mr Leal:** Yes.

**Mr Lewis:** It was already there but they thought under PHIPA that I had a right, so they didn't think I needed this section in there. It was not me, it was my predecessor.

**Mr Leal:** That was going to be my follow-up question.

**Mr Lewis:** It was long before my time. I think there was resistance to it by my office at that time, but it was simply seen as redundant as between my act and the Freedom of Information and Protection of Privacy Act. It has unleashed difficulties for us.

I understand the position at that time was that there shouldn't be a surplus of legislation, but the concern of the office was that we really needed the section because we didn't think we could always rely on another act to support us.

**Mr Leal:** Sometimes these things are like a boomerang.

**Mr Lewis:** Yes. I think the fears at the time have been realized. It's not constant, but it's sufficient and it's quite an impediment.

**Mr Fonseca:** I'd like to thank the Ombudsman for presenting. Sir, would a consequential amendment to the Ombudsman Act address your concerns about the information being disclosed to you in appropriate circumstances?

**Mr Lewis:** The appropriate circumstances wouldn't, in my respectful view, be set out in Bill 31; they already are set out in my act. I have a broad right of inquiry but I have to operate within quite a distinct set of rules. Yes, I think a consequent amendment to my act, such as we have suggested, would in fact do what I have suggested, or clarify it.

People have a great fear—and that's what this bill's all about—that if information is released it will be abused. But I'm bound by confidentiality and my staff are bound by it, and we can't be accessed by FIPPA. So, yes, a

consequent amendment, such as I have stated or something close to it, would probably address the issue, and you wouldn't have to do it in PHIPA, or in whatever.

**Mrs Witmer:** I guess, basically, it does come down to the fact that there's a need for either a separate section or the consequential amendment. Do you have a preference, or do you think that either one of these—

**Mr Lewis:** I guess it would be easier from my point of view if it were in this Bill 31, because then the custodian and those receiving information from the custodian would have it right there. They'd see it; they wouldn't be surprised if all of a sudden I showed up on the horizon. So that would be preferable, but I think the other would work, yes.

**Ms Martel:** Thank you very much for being here today. Just to follow up on that point, I want to ask you about another way to do it, and maybe legal counsel can tell me why you've chosen the route that you have. You referenced subsection 42(1) already when you referenced (g) saying that you felt it probably covered you because it talked about investigation etc. But if you look further up in (g), we're going to give information—

**Mr Lewis:** Where is that?

**Ms Martel:** Subsection 42(1).

**Mr Lewis:** Yes, I've got it.

**Ms Martel:** If you look above—those ideas would come really in regulation—there are other people who are actually named. We say that we will disclose information to all of the regulated colleges, the board of regents, the Ontario College of Social Workers and Social Service Workers, the public guardian and trustee. What happens if we just reference you in there, as your office? Would that solve the problem—and having to do another amendment to the Ombudsman Act?

**Mr Lewis:** I'm told that would work.

**Ms Martel:** Does it matter? Do you have a preference?

**Mr Lewis:** But I thought there was a—I'm sorry, I don't mean to have a private discussion, but I thought the reason—

**Ms Martel:** That's OK. That's why I wondered, because it looked a little bit easier, but maybe there's a reason why you don't want to do it that way.

**Interjection:** I don't see why it wouldn't work, but I'm not—

**Ms Laura Pettigrew:** It would depend on the wording that you put in, in terms of the exclusion, if it was similar to what was suggested.

**The Vice-Chair:** Can I get you to introduce yourself for Hansard?

**Ms Pettigrew:** Yes, sorry. I'm Laura Pettigrew, senior counsel.

**Ms Martel:** If you were to say to the Ombudsman, "for the purpose of administration or enforcement of the Ombudsman Act," for example.

**Mr Lewis:** I'm sure that we can work out a section that would. We've had access to your counsel, the Ministry of Health's counsel, and so on, and we could talk.

**Ms Martel:** OK. I'm just looking for the easiest way to do this.

**Mr Lewis:** We're very grateful for that access, by the way. I must say that when I raised this matter with the ministry they were very quick to respond and see that we got here. So we're grateful for that. *[Inaudible]*.

**The Vice-Chair:** Thank you very much.

**Mr Lewis:** Thank you. I wish you well in your important endeavours.

## RICHARD SPEERS

**The Vice-Chair:** There's been a cancellation with our next presenter, so it'll be the presenter after that. That's Dr Richard Speers. Good afternoon, Dr Speers. You'll have 15 minutes, not 20 minutes like the other groups. You may start any time.

**Dr Richard Speers:** Thank you very much. I'd like to thank the committee Chair and staff for allowing me to speak today. At the indulgence of the committee, I doubt I'll be as efficient as the last speaker, but I will try.

I'm sure, since the hearings began, this committee has heard all of the platitudes on why Bill 31 is important in protecting health information, but I wonder if the focus we're having now is more on how we can enhance sharing and using health information for secondary purposes, or whether we can actually find it within ourselves to offer health information the protection it should have.

Just as a quick review, when patients seek care, they often do so at a huge disadvantage. They disclose some of the most intimate details of their lives in exchange for health care. They do so under the assumption that that information will be protected and is necessary to look after their problem.

All too often, though, personal health information is used or disclosed by secondary users without the knowledge or consent of the patient and much to the detriment of the individual. That harm may range from simple embarrassment to loss of social status and may ultimately escalate to discrimination in hiring, housing or insurance coverage, in spite of protective legislation, or sometimes because of it. The Canadian Medical Association struck a poll in 1991, the Harris poll, which pointed out that 7% of respondents avoided seeking health care so as not to affect their employment or insurance status.

Within a health care setting, disclosure without consent may result in prejudicial care or an inability on the part of the patient to access reasonable choices in health care. There are protocols that exist for the protection of patient information, but they appear to be eroded by secondary users intent on elevating their status in the delivery, administration and study of health care, and ultimately financial gain. It may often be to the detriment of care itself.

I think protections in health care information and human rights—if I can go that far—are well defined nationally and internationally. Article 12 of the United Nations Declaration on Human Rights, to which Canada has signed on, clearly defines privacy as a human right.



The European Union similarly accepts privacy as a human right and enacted the standards for personal information sharing that have been a catalyst for both PIPEDA and the bill before us today.

1410

Although Canada has not formally enshrined privacy as a right, sections 7 and 8 of the charter are being interpreted by our courts as bestowing privacy rights for Canadians. With respect to ownership and control of health records, the 1992 Supreme Court decision *McInerney v MacDonald* went so far as to claim patients had a proprietary interest in their health files and described the concept of patient ownership of a file, a medium which is owned by the physician. It also went on to declare the patient had an expectation of control, once disclosed in the health setting.

With respect to human research, this became an issue after the Second World War when medical studies were undertaken on prisoners, resulting in discomfort and often death. In response to that, the Nuremberg accord was drafted and was developed to facilitate prosecution and execution of physicians at the Nuremberg medical trials. Interestingly enough, this human subject protection was never applied to the studies in Canada and in the United States, specifically, the Tuskegee syphilis study and the Montreal LSD studies of the 1960s. Since Nuremberg, it has been replaced by the Declaration of Helsinki, with its last amendment in 2000. Helsinki has been for years the standard for human subject protection in research.

Among other things, the protections from Helsinki apply to interventions, human tissue use and the use of identifiable data. It defines the need to seek the informed consent and voluntary participation of research subjects. It allows for withdrawal from the study without penalty and promotes the interests of the individual over those of society.

The question must be, how does Canada shape up? If one accepts the position that privacy and protection of personal health information, along with control of and disclosure of one's information—we call it personal autonomy—are true human rights, we might not be doing that well. European rules appear to be very clear in the rights conferred to patients in terms of autonomy, consent and control of information sharing and disclosure, even within the therapeutic context. By following Helsinki more rigidly, Europeans recognize the right to voluntary participation in human research.

I have been given 15 minutes to talk about three fairly important points, and I'm going to focus on these. In section 20, Bill 31 gives a caregiver the right to alert another to the incomplete disclosure of a patient record or the unwillingness of the patient to share information that is necessary for the purpose. I would argue that this clause is in conflict with the basic concept of self-determination. In the old days, when physicians did what was best for the patient, it was referred to as "ethical paternalism." Our court rulings have consistently upheld the right to self-determination and, if we can believe the

Supreme Court on the expectation of control of records once disclosed, it's not outrageous to think a patient should have control of what's shared within a health setting. I'm not suggesting that we seek consent every time, but I think we have to respect the patient who wants to hide certain information.

There are cases where unwanted disclosure by one's physician may prejudice a second opinion or even care itself by offering observations the patient is a whiner, a malingerer or other critical personal assessments. As well, a referring physician may offer information such that a proper secondary investigation is not undertaken. Often a fresh look at a medical situation is required to arrive at a proper diagnosis. Roscam Abbing from the Netherlands argued that forced disclosure relegates patients to being mere information packages.

Section 45 gives the minister the right to share personal health information with a health data institute. This is already happening without the knowledge or consent of patients. Perhaps agencies such as the Canadian Institute for Health Information will produce good evidence of care and outcomes and allow us to better predict utilizations—perhaps. Most people, though, are not aware that Stats Canada has a data-sharing arrangement with CIHI and, further, that the Statistics Act, subsection 17(2) mandates Stats Canada to arrange in such a manner "that it is possible to relate the particulars to any individual." Unless I can't read very well, StatsCan appears to have a clear mandate to uncloak the identifiers.

Although StatsCan releases information in an aggregate manner, there are private interests who are dedicated to reassembling anonymous data. For those who receive the cold calls from stockbrokers at night, they may be the recipient of a printout from a computer program known as Mosaic. In my own case, my income had been published within 5% of my declared income. This was garnered through Mosaic and sold to stockbrokers. On that basis, I was targeted to no end.

The privacy commissioner responded to me and said, "You were not identified specifically in the released census material, but that did not save you from being identified by association ... potentially making you a target for aggressive marketing of everything from financial services to sailboats."

Given the scope of information that will be delivered via CIHI to Statistics Canada, one can only project the impact on one's privacy. This is especially the case for those among us who have suffered from HIV, STDs, or sought therapeutic abortions or psychotherapy. Unless the data sharing arrangements with agencies such as CIHI are modified, I'm curious to see how the minister would be able to protect Ontarians from predatory commercial behaviour.

The last area I'd like to deal with is human research without consent. By adopting the Tri-Council Policy Statement on Ethical Conduct for Research Involving Humans, Canada may have lessened the protections to which Canadians are entitled. The Tri-Council statement



allows for research with modified consent or no consent where there is "minimal harm" or there is a non-therapeutic intervention. My first thought was that I'm not very brave. I don't want anyone deciding what "minimal harm" is. I'm in for no harm, but minimal harm may vary based on whose perspective we're looking at.

Secondly, this paper minimizes the requirement that the research team seek consent for the use of human tissue or identifiable data. Essentially this act—it's not exclusive to Bill 31. It appears in PIPEDA; it appears in the Saskatchewan health bill and the Alberta health bill. Essentially Canadians are being conscripted as human research subjects.

Bill 31 outlines the conditions where non-consented research can take place. It requires the review of a research ethics board, but there is no issue with respect to membership requirement or that the provision might include a member with privacy expertise. I suggest the participants on these boards will vary markedly between regions and perhaps even within institutions. As it's written without controls, uneven applications of research protocols and consent provisions will likely be unpredictable.

In Margaret Somerville's book *The Ethical Canary*, she alluded to two cases involving REBs. In one case, the principal researcher chaired his own REB, and in another the ethicist identified as being on the REB never sat on it once. This should raise alarm bells, at the very least.

When research is privately funded and conducted, we have no assurance what research code will be followed by the team. Will it be the Tri-Council statement, or will it be a more private research code that tends to be more user-friendly? Nevertheless, for-profit research will be entitled to access identifiable information without consent.

It should be recognized that health research is becoming a big business and interests are not always benevolent. In an article, Roscam Abbing wrote that research rarely benefits the research subject.

"Concerns about third party interests have increased with modern medical research activities. The grip commerce gets on research, the increased dependence on researchers on funding by private entities, the financial aspects of patenting, the increased partnerships between academia and industry, the worldwide competition in science and the measurement of research performance in output terms of numbers of scientific publications and patents granted, rather than in terms of their contribution to public health are some of the underlying causes."

I believe governments are defaulting on their obligation to protect those who cannot protect themselves. European standards do allow for research without consent; however, consent is the default position.

Perhaps Bruce Phillips stated it the best in 1998-99 in his annual report to Parliament, where he stated, "Allowing health bureaucrats and researchers to represent the patients' interests risks putting Colonel Saunders in charge of the chicken coop."

The Australians, in developing their electronic health record HealthConnect, recognized and discussed a

hierarchy of information, with the highest level being personally identifiable, degrading down to de-identified but relinkable and, finally, aggregate. They argued that the burden of consent should go up as does the hierarchy, as the identifiability does. We don't see that in our legislation; we're defaulting this entirely to the courts or to the research boards.

**1420**

Alberta Hansard may have captured the essence of the debate when the health minister, commenting on Bill 10, recognized consent for what it actually may be: an administrative burden. Nevertheless, the ability to conduct research on human beings or their personally identifiable information should be regarded as a privilege and not a right. International law, Canadian law, international human rights legislation and the Supreme Court of Canada recognize the ability of the patient to control that information.

As an aside, the Australian HealthConnect also recognized a need and requirement to allow people to mask their identities for certain actions of work or for those among us here today who are public figures. They argued that victims of child or sexual abuse, domestic abuse, sex trade workers and those with very highly sensitive illnesses should have the right to seek care in total anonymity. I would submit those are goals to try to reach.

With respect to the three areas of Bill 31 I have described, I would submit to the committee and to the members that the bill offers insufficient protection of the privacy and dignity of Ontarians. I believe a balance can be struck, but these three areas remain tough to balance.

**The Vice-Chair:** Thank you, Dr Speers. Unfortunately there's no time for questions. We'll have to move on to the next presenters.

**Dr Speers:** I shortened that a lot.

**The Vice-Chair:** It was 15 minutes right on.

## ONTARIO ASSOCIATION OF COMMUNITY CARE ACCESS CENTRES

**The Vice-Chair:** The next presenters are from the Ontario Association of Community Care Access Centres. Good afternoon. You may begin.

**Dr James Armstrong:** My name is Jim Armstrong, chief executive officer of the Ontario Association of Community Care Access Centres. Accompanying me is our policy adviser, Georgina White. On behalf of the association and our members, I would like to express my appreciation for the opportunity to appear before the committee today.

The Ontario association is a voluntary organization that represents Ontario's 42 CCACs. As the provincial voice for CCACs, our mission is to support and represent the interests of our members, to provide leadership in shaping health policy and to promote best practices on behalf of the people we serve.

As background information, CCACs are statutory corporations under the Community Care Access Corporations Act, 2001, and provide services under the Long-



Term Care Act and the Health Insurance Act. CCAC board members and the executive directors are appointed through the Lieutenant Governor in Council. The centres receive 100% of their operating funds from the Ministry of Health and Long-Term Care, with total annual provincial budgets of approximately \$1.2 billion.

It's the nature of the CCAC services that is central to our perspective on Bill 31; in particular, that many of our services are provided in people's homes and that the services are provided through contracts with many service providers to a large number of people across the province each year. The vast majority of CCAC funding is used to provide home care services with three key objectives: hospital substitution to prevent the need for hospital admission or to enable people to return home from hospital sooner; maintenance to enable people with long-term health care problems and functional disabilities to live as independently as possible in their own homes and prevent or delay the need for long-term-care placement; and prevention services to promote wellness and prevent deterioration of health to higher levels of care, and also to support family caregivers.

Almost 60% of referrals to CCACs come directly from hospitals, with the remainder coming from individuals, family members, physicians, schools and other community agencies. As an indication of the scale of the service activity, last year CCACs arranged 6.5 million nursing visits, 15 million hours of personal support and homemaking and over 1.3 million therapy visits. CCACs manage over 1,000 contracts with nursing, personal support and therapy service providers for the delivery of these services. Managing these contracts requires the timely and effective sharing of information to ensure that the services are responsive to the changing needs of our clients, to meet consistent standards and preserve clients' rights.

CCACs interact with all other parts of the health care system: physicians, hospitals, long-term-care facilities, school boards, community service agencies and health service providers. CCACs have major responsibilities in assisting individuals to navigate the health care system and in facilitating service coordination and information sharing with multiple health care providers. Therefore, we are keenly interested in this Health Information Protection Act, Bill 31. I am pleased to express our support for this legislation and to commend the government for bringing forward an act that deals specifically with the protection of health information. It's evident from the contributions you've had over the last couple of days that there is broad support for this legislation, and we look forward to its successful passage.

In the absence of provincial legislation to date governing the protection of health information, there has been considerable confusion around the scope of application of the federal PIPEDA in relation to CCACs, their contracted service providers and other health care organizations. In addition to bringing clarity in relation to the protection of personal health information, we believe that this proposed act provides a flexible balance between

the protection of personal privacy and the effective delivery of health care. This is of major interest to us because of the sheer scale of services and the number of people that CCACs serve each year.

As well, the permitted uses under section 36 of the act also recognize the importance of using health information for service planning, monitoring and evaluation, education, risk management and quality improvement, all of which are also key parts of CCAC activities.

Section 14 of the act is especially important to CCACs since it permits a health information custodian to keep a record of personal health information in an individual's home with the individual's consent. This provision acknowledges the special challenge of providing coordinated, consistent care, sometimes by multiple health care workers, in the home environment.

The committee has heard concerns from a number of organizations about the requirement for express consent in relation to the use of personal information for fundraising purposes. While CCACs do not carry out fundraising, many of the non-profit service providers with which we have contracts do rely on fundraising to support the provision of other community services. We recognize the importance of these fundraising activities to maintaining a broad range of community services. At the same time, CCACs have been concerned in the past about the use of personal information for these purposes and the confusion it can sometimes lead to when consumers do not fully understand the relationship or lack of relationship between fundraising activities and the fully funded services they receive through CCACs. We would support an amendment that would allow consumers to opt out of fundraising activities while preserving their right to be informed and have the choice about how their personal information is being used.

Like other presenters, we have concerns about the limited consent or so-called lockbox provisions. We are concerned that an individual's choice to withhold consent for the disclosure of information that may be crucial to the delivery of appropriate health care could jeopardize their health and place health care workers at risk. Both as receivers of health information from hospitals and other providers and as providers of information to long-term-care facilities and in-home service providers, we believe the disclosure of all medically necessary information to ensure appropriate treatment and placement is essential.

We very much appreciate the open consultation process undertaken in relation to this act, and in particular the provisions related to consultation around regulations. We believe that consultation will be particularly important in relation to the specification of information practices or procedural processes that health information custodians will be required to comply with when collecting, using or disclosing health information to ensure that they can be successfully implemented.

Briefly, I'd like to also just speak to the time frame and cost of implementation. Education on the act and the regulations will be key to successful implementation. The OACCAC is in the process of arranging an in-service



education program for CCACs on health privacy. In collaboration with the continuing care e-health council and other long-term-care associations, we provided our members with a privacy tool kit based on the Canadian Standards Association principles, in anticipation of the requirements of PIPEDA. That tool kit will now need to be modified to ensure compliance with HIPA.

In addition to ensuring that CCACs have the tools and knowledge to successfully implement the legislation, education of our many contracted service providers will also be necessary. Given the education and preparatory work that will be required for implementation, as well as the time needed for consultation and regulations, our association is concerned that July 1 is an unrealistic implementation date. We would recommend an implementation date that provides a reasonable interval after the passage of regulations to ensure that appropriate standards and practices are in place.

Finally, there is the issue of costs related to implementation, not only for CCACs but also for our contracted service providers. In the absence of specific funding to support the implementation of the act, the result would be that service provider costs are likely to be included in the service rate bids under our managed competition process. Higher rates would then mean that we can provide less service to the public within our overall funding envelope. We will be working with the provincial associations that represent our providers to develop a cost estimate and we will provide this information to the committee.

In conclusion, let me express again my appreciation for the opportunity to appear before you and to reiterate our support for this legislation.

1430  
**The Vice-Chair:** We'll start with Mrs Witmer.

**Mrs Witmer:** Thank you very much for your presentation. I do appreciate it, Dr Armstrong. You've certainly pointed out some recommendations that need to be made that are very similar to those of other groups—the opting out, the lockbox provisions and the need for consultation on the regulations.

I just want to focus on implementation costs. I would really appreciate it if your association would work with your providers in order that we could have a cost estimate. CCACs at the present time receive just enough funding, and maybe not enough, to do the job that they're required to do, so I think it is important when you take into consideration that there are going to be some tools, education, and certainly other things that are going to need to happen before you could successfully implement this new legislation. It would be helpful if you could give that to us.

The other one is the implementation date. As you and others have correctly pointed out, July 1 just isn't reasonable, because the regulations are not going to be drafted today or tomorrow and they're going to follow what we're doing, and until you have the standards and the practices, it's going to be difficult to embark on education. When you say "a reasonable interval after the

passage of regulations," what do you mean by "reasonable"? If this were passed by, say, July 1, would you say January 1, 2005? What's reasonable?

**Dr Armstrong:** At the same time, of course, we need to acknowledge that there is an urgency about proceeding on this. We envisage that a lot of preparatory work could happen in parallel. It's going to be known, once the legislation is passed, what is likely to be a lot of the content that's coming in the regulations. A lot of that can happen in parallel and we're gearing up for that, so I would say that would be the outside date that we would envisage.

**Mrs Witmer:** Is there any cost saving to implementing this bill at the start of the year, January 1?

**Dr Armstrong:** I don't think that the time of the year would make that big a difference to us.

**Mrs Witmer:** Or for any other service provider?

**Dr Armstrong:** I don't think so.

**Mrs Witmer:** Changes they might have to make to their system?

**Dr Armstrong:** Not given the nature of the kinds of changes we're talking about here. We will look more closely at that question as part of the next few days of looking at what the implications are for planning for implementation, but I don't at this point foresee that that would be a big factor.

**Ms Martel:** Thank you for coming today. Actually, my question did concern the implementation, because we've heard a number of the other arguments already. Certainly a number of people have come forward expressing the same concern. You're saying that six months is the outside limit, obviously, because there's an urgency to be in compliance with privacy legislation. I guess the issue will be whether the regulations can be developed in tandem as the bill moves forward, and we need to know more about that process. So you answered my question effectively with respect to how long you think it would take for you to have it implemented successfully across the system.

**Mr Fonseca:** Today, when some of the patients under a CCAC refuse to give up information, what happens in that circumstance? What do you do? What do the CCACs do, like a lockbox effect, if they refuse to give out or allow that information to be disclosed?

**Dr Armstrong:** I'll ask Georgina White to speak to that.

**Ms Georgina White:** Generally, the client would be counselled around the risks associated with not providing that information, with the hope that at some point they will agree, particularly if it's crucial to their medical care, but if the client refuses to provide the information [Inaudible].

**Mr Fonseca:** And how much information do you need for an appropriate placement? Do you look at everything? Do you only need some? What are you asking for?

**Ms White:** What would really relate to the client's specific needs, what kind of programming would be necessary for an appropriate placement, whether there were issues related to dementia, with wandering, poten-



tially violent behaviours, those kinds of things that could place not only the individual at risk, but other residents and health care workers as well.

**Mr Fonseca:** So do the CCACs have policies and procedures in terms of how much information you would actually look for with a specific client?

**Ms White:** They do a comprehensive assessment on every client who requires long-term care and then basically develop a profile that they provide to the facility that identifies issues and risks related to the person.

**Mr Fonseca:** And in terms of the fundraising, is all that information in regard to the client—because they can have a wide variety of different ailments—used for fundraising purposes?

**Ms White:** Sorry?

**Mr Fonseca:** So if they've got different diseases, are all the different agencies made aware of—

**Ms White:** No, it would be in relation to some of the non-profit community agencies, nursing providers, personal support providers who also provide other community programs. They may provide volunteer visiting services or other kinds of activities that they rely on fundraising to support. So they often will use their CCAC client lists as potential donors.

**Mr Fonseca:** My worry, I guess, was around that a CCAC client may be bombarded by different marketing efforts rather than just a cancer patient that may be only targeted in terms of different cancer foundations or organizations.

**Ms White:** No, I don't think that's been a particular issue. It'd really just relate to the providers that were dealing with it.

**Ms Wynne:** Just a question around the implementation: Are there changes that you have already made—I'm talking about the timeline here—in order to be compliant with the federal legislation?

**Dr Armstrong:** There has been quite a bit of activity in terms of further change or development in policies and practices over the past few months in preparation for PIPEDA. So if you're thinking that that takes us somewhat along the path, the answer is yes. Designation of privacy officers, privacy impact assessments on

information systems, establishing policies and procedures related to consent and so on: A lot of activity has been underway, which I think will help in terms of implementing the provincial legislation.

**Ms Wynne:** Right. So we're part way down the road, but you still think that there's more time needed than what's provided for in the bill.

**Dr Armstrong:** Right, because there are a number of specific provisions that relate to this. In our case, having so many service providers around the province with so many different kinds of roles, and their own staff over and above our own CCAC personnel and practices, it's just a very extensive process to adapt.

**Ms Wynne:** It's interesting to me that a lot of those small agencies haven't come to speak to this bill, and that may be just my lack of experience. Maybe they came during the first rounds, but they haven't come this time. Can you explain that at all? They're more happy that this is happening than not, or do you have any explanation for that from your provider agencies? So they haven't been calling you and they're not worried? You're not here representing them particularly. You're talking about the CCACs.

**Dr Armstrong:** I don't know whether they're relying upon what will be coming to them through the CCACs. They have their own responsibilities. This is one of the reasons why we partnered with four other associations in developing this tool kit, so that for, example, the Community Support Association members were assisted through the development of this joint tool kit, which I want to note was funded by the Ministry of Health and Long-Term Care. So it may well be that they for various reasons did not feel the need to appear this week or were not following the process to this point.

**Ms Wynne:** OK. Thank you very much.

**Dr Armstrong:** Thank you.

**The Vice-Chair:** Thank you for your presentation. Thank you, everybody else, for presenting. Now I'd like to ask that the room be cleared because there is a meeting of the subcommittee. Thank you once again.

*The committee adjourned at 1440.*







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## CONTENTS

Wednesday 28 January 2004

<b>Health Information Protection Act, 2003, Bill 31, Mr Smitherman /</b>	
<b>Loi de 2003 sur la protection des renseignements sur la santé,</b>	
projet de loi 31, <i>M. Smitherman</i> .....	G-97
Office of the Provincial Auditor .....	G-100
Mr Gary Peall	
Mr John Sciarra	
Psychiatric Patient Advocate Office .....	G-103
Mr David Simpson	
Ms Lora Patton	
National Association for Information Destruction .....	G-106
Mr Dan Steward	
Mr Sheldon Greenspan	
Canadian Institute for Health Information .....	G-110
Mr Richard Alvarez	
Ms Joan Roch	
Ontario Dental Association .....	G-113
Dr Blake Clemes	
Mr Frank Bevilacqua	
Ms Linda Samek	
St Michael's Hospital .....	G-116
Mr Peter Lambert	
Ms Naomi Margo	
Office of the Ombudsman of Ontario .....	G-122
Mr Clare Lewis	
Ms Laura Pettigrew	
Dr Richard Speers .....	G-125
Ontario Association of Community Care Access Centres .....	G-128
Dr James Armstrong	
Ms Georgina White	



G-5

G-5

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## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 3 February 2004

# Journal des débats (Hansard)

Mardi 3 février 2004

## Standing committee on general government

Health Information  
Protection Act, 2003

## Comité permanent des affaires gouvernementales

Loi de 2003 sur la protection  
des renseignements sur la santé



Chair: Jean-Marc Lalonde  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Tuesday 3 February 2004

Mardi 3 février 2004

*The committee met at 1352 in Algoma's Water Tower Inn, Sault Ste Marie.*

HEALTH INFORMATION  
PROTECTION ACT, 2003LOI DE 2003 SUR LA PROTECTION  
DES RENSEIGNEMENTS SUR LA SANTÉ

Consideration of Bill 31, An Act to enact and amend various Acts with respect to the protection of health information / Projet de loi 31, Loi édictant et modifiant diverses lois en ce qui a trait à la protection des renseignements sur la santé.

**The Chair (Mr Jean-Marc Lalonde):** I call this hearing to order. First of all I want to apologize for being late. We're having a heavy snowstorm in Toronto, so there was a delay in leaving Toronto. We are about 25 minutes later than the schedule is showing.

ALGOMA COMMUNITY CARE  
ACCESS CENTRE

**The Chair:** I call immediately the Algoma Community Care Access Centre, if you want to come forward, please. Welcome to the standing committee on general government. We are here to hear your concerns or if you have any comments to make on Bill 31. Everything will be recorded. The way we proceed is that you have 20 minutes to do a presentation. If you take the whole 20 minutes, then we won't have any time for a question period. If you take 15 minutes, the remaining time will be divided amongst the three parties. I believe the last time that we had a hearing, last week, the last question was asked by Mrs Witmer, so the NDP will be the first one to ask a question after your presentation. Thank you for taking the time to come and visit us.

**Ms Mary Tasz:** Good afternoon. Thank you, Mr Chair and standing committee members, for providing me with the opportunity to appear before the committee today. My name is Mary Tasz. I'm a manager of therapy services with the Algoma Community Care Access Centre. Accompanying me is Rhonda Chennette, manager of client services.

The Algoma Community Care Access Centre is a statutory corporation under the Community Care Access Corporations Act, 2001, and provides services under the Long-Term Care Act, 1994, and the Health Insurance

Act. As you are aware, the access centre boards and executive director are appointed through the Lieutenant Governor in Council. The Algoma Community Care Access Centre receives 100% of our operating funding from the Ministry of Health and Long-Term Care.

The access centre has offices in Sault Ste Marie, Elliot Lake, Blind River and Hornepayne. We cover an area of 48,737 square kilometres and a population of 118,567 people. Our organization in the last year serviced 6,305 individuals.

In Algoma, people of all ages in homes, schools, long-term-care facilities and places of work may access health, support and information services. These services are based on client needs and are provided on a visitation basis. Referrals may be received from individuals, families, friends, physicians and community agencies. The Algoma Community Care Access Centre offers many services, including case management, placement coordination, nursing, different types of therapy and personal support. Many of these services are offered by in-house staff, and contracts for professional services are often utilized in the district. Our organization is sensitive to the privacy and confidentiality of the individuals we service, and most of our professional staff are members of colleges that set regulations and standards of practice that speak to the release of information, sharing of information, confidentiality and record keeping. Further, these colleges currently have disciplinary measures in place for breach of the regulations and standards.

Bill 31 is important to all Ontarians, because privacy is fundamental to our free and democratic society. Our access centre interacts with many parts of the health care system, including long-term care facilities, hospitals, school boards, community service agencies and other health service providers. Our care coordinators are responsible to assist individuals with understanding the health care system and in facilitating service coordination with in-house staff and external providers and sharing information with many health care providers.

PIPEDA has been the legislation that we have been adopting, because it became law on January 1, 2004. As an organization, we have adopted the 10 principles. PIPEDA speaks to the transfer of information, but Bill 31 takes the legislation into the health system and clearly identifies the health care providers who should hold the information.

The Algoma Community Care Access Centre supports the personal Health Information Protection Act, 2003, as



does the Ontario Association of Community Care Access Centres. Bill 31 provides a common set of rules and clear boundaries, which is vitally important to health organizations as we move to implement this legislation. This bill services two groups of individuals.

Organizations like ours that collect, utilize and disclose information for a variety of reasons: Section 36, permitted uses, recognizes the importance of using health information for service planning, monitoring, evaluation, education, risk management and quality improvement. Most importantly, however, Ontarians who access care will be ensured privacy of their personal information.

Section 14 of this act is welcomed by health care staff, as it permits the health information custodian to keep a record of personal health information in an individual's home with the individual's consent. This is especially important with multiple care providers entering the home environment. This bill is a positive step toward safeguarding personal health information and, again, the privacy of Ontarians.

As a community organization, Bill 31 makes it mandatory that we comply with this legislation. Although it is hoped that the individual knew that he could access his personal health information, this legislation will ensure that each individual knows that it is his right to see this information and to even change it or amend it if he disagrees. There is a process in place for complaints that is clear, and this will ensure that the individual is heard and that the organization is accountable. This bill ensures that personal information remains private, confidential and secure. It provides a clear framework that governs the disclosure of personal health information, as well as how and why it is collected and what it will be used for.

There is a concern about the limited consent or lock-box provision in this act. If there is a circle of care around an individual and that individual chooses to withhold consent for disclosure of information, then the delivery of appropriate health care could be jeopardized. This has further implications in that critical information could be blocked and information required for long-term-care facilities could result in inappropriate placement and treatment of the individual because it is impossible to be able to identify the individual's needs without all of the information.

This act also speaks to implied consent, explicit consent and informed consent. Wherever possible, explicit consent or informed consent is preferred, and gives individuals greater control and confidence in the control of their personal health information. This act also allows for individuals to withdraw consent, whether the consent is implied or expressed. Using the concept of the circle of care and implied consent, it can be explained to an individual that personal health information will be used only as it is required.

This act will ensure that individuals will be informed about their rights to privacy and will have control of who has their information. Individuals will be informed about the use and disclosure of their information at the first opportunity, and organizations will document the use and

disclosure of all information. A health information custodian will be responsible for ensuring that the records of individuals are retained, transferred and disposed of in a secure manner, which should provide further assurance of the privacy of an individual's information.

#### 1400

Bill 31 talks about the creation of a secure health data institute. In health planning and research, this will ensure that the release of information and analysis of information will not have any identifying information. I'm not clear about where that will go in terms of long-term research.

We believe that the key to successful implementation of this act is education. The consumers and providers both require education to understand the rights and responsibilities of this act. The Ontario Association of Community Care Access Centres did provide us with a privacy tool kit that is based on the Canadian Standards Association's principles, in anticipation of the requirements of PIPEDA. This gives us a framework in which to comply with the federal legislation. This, however, will need to be modified to ensure compliance with the Personal Health Information Protection Act.

A common set of rules and guidelines is imperative to planning with all health care organizations in ensuring that there are consistent policies in place, access to personal information and the right to challenge compliance with privacy principles. Training of all the organizations so we interpret this act in a similar manner is vital to consistency amongst health care providers.

In conclusion, we are very concerned about the July 1, 2004, implementation date, especially in light of the area that we cover and recognition that we will require the tools and knowledge to implement this legislation and educate each staff member and those we have contracts with.

We would like to thank the standing committee for taking the time to travel to Sault Ste Marie and for your consideration. Each of us has the best interests of the individuals we serve, and we would like to see this legislation introduced.

**The Chair:** Thank you very much. Just before we proceed with the question period, I want to inform the audience that instant translation is available at the back. Also, you may address the group in the language of your choice. We all have the equipment.

We have 10 minutes left, which will be divided among the three parties. I am going to start with MPP Shelley Martel.

**Ms Shelley Martel (Nickel Belt):** Thank you for being here. I wanted to deal with your last point first: your concern about the implementation date. If you had it your way, what would be a more preferable implementation date that would allow you to do the training you need to do in order that your staff can comply?

**Ms Tasz:** I'm going to make a guesstimate and say six months after the act is proclaimed.

**Ms Martel:** Do you have any idea of what training costs might be for your organization as you try and

comply with the law and make sure not only yourselves as staff but also some of those you work with and are under contract with you also understand what their responsibilities are?

**Ms Tasz:** I think the training costs are going to be in terms of the time our staff have to take to come to the sessions and the time it takes me away from my job as a manager of therapy. I'm not sure what the actual cost would be.

**Ms Martel:** Do you think the kit that was already prepared by the association might be able to be modified and cut down some of those costs?

**Ms Tasz:** I think that's the plan of the association.

**Ms Martel:** You talked about consent, and one of the things you didn't mention, which the Ontario association referred to last week, had to do with express consent and how that would impact on fundraising. We've certainly heard that concern from the hospital sector, but we also heard it from the association in the context of the community-based organizations that the CCAC works with and how they would be impacted in their fundraising efforts if they were not able to go back to some of those very patients for whom they provide care, whether it be Meals on Wheels, support etc.

Do you have any sense in terms of the clientele you work with, the community-based organizations you would be associated with, if consent for fundraising purposes had to be express versus implied? What do you think that would do to their ability to raise money?

**Ms Tasz:** To the other organizations? Because we don't raise—

**Ms Martel:** No, exactly. But I'm thinking of community-based organizations like Meals on Wheels, for example.

**Ms Tasz:** I think express consent is important, but I don't think I want to get into that. The Group Health Centre does a lot of fundraising, and I think Elizabeth will speak to that. I think people already are giving consent so that fundraising can occur, and I don't think information is being given out unless they're given permission for that.

**The Chair:** The government side.

**Mr David Oraziotti (Sault Ste Marie):** Thank you, Ms Tasz, for your presentation this afternoon.

I'd like to highlight for the committee the size and area of jurisdiction that you're responsible for and the number of clients that you serve. Do you see any implications, in terms of this legislation being implemented, that would make it more difficult to deal with Bill 31 and the protection of information, given the various offices and size of the jurisdiction you're responsible for managing?

**Ms Tasz:** No, I don't. We cover a huge area, but all staff report to the central area. They would be trained the same way. We would have to get to our contract people—that's the difficulty—and make sure that they understand. Part of our travel is to go out to those areas regularly.

**Mr Oraziotti:** OK. If I could just follow up with one other question: On page 5 of your presentation, you refer

to "limited consent or 'lockbox'" and implications that may prevent information from getting to appropriate health care providers. Do you have any suggestions on what we might be able to do with the bill in regard to streamlining that, or suggestions that may make that concern less of an issue for groups like yourself?

**Ms Tasz:** I would hope that the circle of care may cover that off, may be a support system.

**Mr Oraziotti:** Do you see it as a major concern in terms of the legislation?

**Ms Tasz:** From my end, I don't think it's a major concern, but we're speaking from a smaller community where we have a lot of information that you may not have in Toronto or other areas.

**Mr Oraziotti:** OK. Thank you.

**Mrs Maria Van Bommel (Lambton-Kent-Middlesex):** I thank you very much for being here today. I certainly appreciate hearing from the grass roots and the people who actually do the on-the-ground delivery of health care.

When you talk about a circle of care, could you explain to us who is involved in providing that circle of care in the work that you do here?

**Ms Tasz:** From the access centre perspective, it would start with the care coordinator, and it could be a nurse, a physiotherapist, a doctor, a patient—there are different therapy groups involved with one person providing services in their home. So that would be their circle of care: family members.

**Mrs Van Bommel:** Thank you.

**The Chair:** Now we go to the official opposition.

**Mr Jim Flaherty (Whitby-Ajax):** Thank you for the presentation today.

I take it, under the bill, that the Algoma Community Care Access Centre would be a personal health information holder, a health information custodian under the bill. I have a couple of concerns. One is about the disclosure of personal health information in the hands of health information custodians such as the Algoma Community Care Access Centre. In section 36 of the bill, it says that your organization could, as a custodian, use that identified health information, a person's personal health information, for all kinds of purposes—for risk management, for error management, for activities to improve the quality of care, for educating agents to provide health care, for the purpose of a proceeding—and that you could pass that personal health information on to agents of the organization for those purposes.

Don't you have some concern about the breadth of those permissive uses of individual health care information without the consent of the individual?

**Ms Tasz:** The individual does consent per release.

**Mr Flaherty:** I'm sorry?

**Ms Tasz:** The individual would consent.

**Mr Flaherty:** That's my concern. It appears from the bill that the individual would not be required to consent to that. Subsection 36(1) gives a health information custodian the power to use this personal health information about an individual without consent. That's my concern.



I think we all value the privacy of our personal health information. I'm wondering whether, in your view, it's necessary to go that far to give custodians of personal health information that range of uses without express consent.

1410

**Ms Tasz:** I think what I want to go back to is that we have regulated professions within the access centre. As an organization, we do get consent before we release information. I think I hear what you're saying, but we still have to get permission before we can release that information. My understanding of the concept of the circle of care is it would only be released if required, if it was going to help that person, if it was necessary for treatment.

**Mr Flaherty:** How do you handle the issue now?

**Ms Tasz:** From one person to another? To talk to one person and to a different group? Is that what you're asking?

**Mr Flaherty:** Yes. What do you do with personal health information now, forgetting about this bill for a minute?

**Ms Tasz:** We get a person's consent to release that information.

**Mr Flaherty:** Thanks.

**The Chair:** Any more questions from the opposition?

**Mr Jerry J. Ouellette (Oshawa):** I have a question: Have you done any analysis to determine the cost to implement and, more importantly, the cost for storage of the records? Maintaining the security of records has been brought up in the past by various health providers—it's going to be very costly and currently is. Have you looked at any of those figures and determined the impact on your access centre?

**Ms Tasz:** No, I haven't.

**Mr Ouellette:** Any ideas on what that cost is going to be and how it's going to outlay?

**Ms Tasz:** No idea.

**Mr Ouellette:** OK. Thanks very much.

**The Chair:** The PA to the minister has a question.

**Mr Peter Fonseca (Mississauga East):** I'd like to thank the Algonquin Community Care Access Centre for presenting today. Your understanding and support of the bill is very thorough. One thing that was brought up was the lockbox. What happens now if an individual refuses to give you that information—refuses to allow you to see information?

**Ms Tasz:** The individual has the right to give us the information or not give us the information.

**Mr Fonseca:** In a case now where you feel you may need that information, what's done?

**Ms Tasz:** You go back to the individual and explain why—again, it's information, it's knowledge, it's teaching—and again ask for consent.

**Mr Fonseca:** In terms of personal health information, do you need all information? What information do you use presently?

**Ms Tasz:** We only need the information that's required for the service that's being brought in. That's the information that's used.

**The Chair:** Time is running out. We thank you for your presentation. Again, congratulations on the work you've been doing.

## SAULT AREA HOSPITAL

**The Chair:** The next group will be the Sault Area Hospital, and will be presented by Manu Malkani, chief executive officer and president of the hospital.

Welcome, bienvenue. Once again, you have 20 minutes, which could be shared among the parties in the question period after, if you don't take the whole 20 minutes. You can start now.

**Mr Manu Malkani:** Good afternoon, Mr Chairman and members of the committee. My name is Manu Malkani. I'm president and chief executive officer of the Sault Area Hospital, here in Sault Ste Marie. My colleagues with me today are Johanne Messier-Mann, who has many hats at the hospital, including that of our chief privacy officer; Mary Lou Kennedy, who is our manager of health records; and Brady Irwin, who is our vice-president of public affairs. On behalf of all of us, I welcome you to Algoma district and thank you for giving us the opportunity to share some of our views.

By way of background, Sault Area Hospital is a recent amalgamation of two separate hospitals. Although we are corporately a new entity, just a couple of years old, we have been working together for the last 10 or 12 years with two boards but a single administration and amalgamated operations and so on. Our combined hospitals total 364 beds and cover a wide range of services, from acute care to long-term care. We employ over 1,700 staff. We have 350 volunteers, 120 physicians, 28 dentists and three midwives at the hospital. We also have a budget of about \$130 million. So we are a fairly large operation in that way.

We are a member of the Ministry of Health and Long-Term Care's rural network number 9, which links us with our partners in Wawa and Hornepayne. We provide a wide range of primary, secondary and tertiary care services to people not just in Sault Ste Marie but across Algoma district. We serve a total population of about 120,000 people scattered around an area of about 50,000 square kilometres.

The significance of all this is that we're a district referral hospital. Many of our patients come from long distances—three or four hours' drive and more one way—and after getting care here they eventually go back to their home communities for continuing care. We also refer patients from Sault Ste Marie to other regional centres in Sudbury, London, Toronto and elsewhere. Given our geography and the fact that so many other providers are involved, the efficient flow of information between us and other providers, both here in Sault Ste Marie and elsewhere in Ontario, is that much more key to good patient care.

We have always viewed patient privacy and confidentiality as very important matters. As some evidence of that, we have attached to our brief, copies of some of our current policies on patient confidentiality and privacy. That's just to give you a sense of the degree of rigour we have brought to bear on this task over the years.

As far as Bill 31 is concerned, we certainly endorse the proposed legislation. There are, however, three or four areas where we have some recommendations for your consideration. These are fundraising, research, correction of personal health information, the so-called lockbox provision and the quality of care committees.

As an overall comment with respect to patient information, we believe that the current direction of the health system to create integrated electronic medical records is in the best interests of patient care. While the proposed legislation does not appear to limit or constrain this, we do recommend that in crafting the regulations which will eventually support this legislation, special attention is given to enable the linking of records from different providers into an integrated patient record, secured of course with appropriate safeguards to prevent unwanted access.

As far as fundraising is concerned, the biggest financial impact of Bill 31 for hospitals will potentially be in the area of fundraising. If the act is passed as currently written, it will result in significant loss of revenues.

The requirement that hospitals seek express consent from individuals will pose considerable challenges, and we believe this is inconsistent with the privacy expectations of patients. I say that based on our experience of having received virtually no complaints about privacy and sharing information in this regard. Getting express consent is not practical and will take time away from patient care on the part of people who have to seek that consent.

Given that fundraising is a legitimate activity of hospitals and their foundations, Sault Area Hospital cannot support this provision of Bill 31. We recommend that at a minimum, hospitals be allowed to share with their foundations and fundraising staff non-health personal information such as name, title, address and phone number.

As an added measure of control of their information by patients, we do support providing them with a variety of non-patient-specific opting out provisions—information through posters and signs and so on, making them aware of what information we would share and how we would use it and giving them the choice of opting out, of directing us not to do that.

On the subject of research, we request that the definition of "research" in the legislation be narrowed so it very clearly excludes studies of an administrative or quality improvement nature. We don't feel it is necessary or appropriate to submit these to the research ethics board for approval first.

1420

With respect to access to and correction of personal health information, we note that subsection 53(10) requires that following correction, inaccurate entries be deleted from the record without any connecting link.

While we support the provisions to correct inaccuracies, we suggest that the link to the original inaccurate information be maintained. There are cases, for example, where the staff treating the patient may arrive at a diagnosis that eventually turns out to be inaccurate and is changed, but the treatment that was based on that is still a legitimate part of the record, and we think it should stay as part of the chart. We believe, as I say, that it would be important to retain all of this as part of the record even after the correction is made.

We are also concerned about provisions, set out in clauses 36(1)(a), 37(1)(a) and 48(1)(d), whereby patients may limit the use and disclosure of their personal health information to other care providers. We believe these sections put the patient at increased risk of inappropriate treatment and adverse consequences to their care, as well as potentially some additional risk to providers. We believe as well that such provisions will be very impractical and very costly to implement.

With respect to the Quality of Care Information Protection Act, it is unclear whether the protection provided applies only to one committee, ie the quality-of-care committee, or to any other committees of a similar role in the hospital where individuals carry out these sorts of responsibilities. The latter interpretation is necessary, given that there are many committees in the hospital. In our hospital, for instance, every one of seven programs has its own quality management committee, and there are others at the board level as well. So while we support the spirit and the intent, we hope it can be clarified that the same safeguards apply to as many quality-of-care committees as may be in place.

In summary, Sault Area Hospital supports the spirit of Bill 31 and commends the government for moving on this very important initiative. We believe our recommendations will serve to support and strengthen the legislation while protecting the interests of patient care.

Finally, we ask that sufficient consideration be given by government to the implementation of this legislation, particularly the cost of incorporating the new requirements and training of hospital staff. Sufficient time and resources must be provided so that the implementation of this legislation does not detract from the provision of care. Thank you very much.

**The Chair:** We have nine minutes left, which will be split among the three parties. I'll go to the government side, and Mr Leal.

**Mr Jeff Leal (Peterborough):** How much money does your foundation raise for Sault Area Hospital activities?

**Mr Malkani:** Through our normal fundraising activities every year we raise about \$800,000 to \$900,000.

**Mr Leal:** And you'd be concerned, just to follow up, that this legislation may put a crimp in your ability to raise that on a continuing basis?

**Mr Malkani:** I'm going to answer that in two parts, if I may. The portion we raise every year that comes directly out of new patient solicitations is about 5%, roughly \$40,000 to \$50,000 on an annual basis. Fundraising is



largely dependent on building a relationship with the donor, and what we raise in the first year is just a starting point for subsequent years. So I can't really give you a clear estimate as to what that will materialize to over the life of the relationship.

**Mr Leal:** I guess once you make the connection, there's the possibility of giving a second, third, fourth or fifth time.

**Mr Malkani:** Exactly.

**The Chair:** I have a question from Mr Rinaldi.

**Mr Lou Rinaldi (Northumberland):** In your conclusion, knowing the size and scope of the service area you cover with the two hospitals, you hinted that there are going to be some costs in the time frame as well, obviously, based on your geography and your position. Do you have any idea what some of those costs might be and what time frame you think would be adequate?

**Mr Malkani:** The costs are really in two parts. One is the training and orientation of the 1,700 staff and all of the physicians and so on on the new provisions. That would probably take three to four months to do—six months at the outside—and from a cost point of view, I would say \$20,000 to \$30,000. So it's not extraordinary in that sense.

The bigger and more difficult part of the costs to estimate are the system-related changes we would have to make. I unfortunately don't have an estimate for you on that. I can tell you now that we just do not have the capacity to comply with the lockbox provisions as stated in the act now. It would require a complete overhaul of the system, which would be at least in the hundreds of thousands of dollars, if not more, and from a time implementation horizon point of view would be at least a year or more.

**Ms Kathleen O. Wynne (Don Valley West):** Just a quick question about the correction clause. Are you suggesting, then, that both pieces of information should just stay in the record?

**Mr Malkani:** Yes.

**Ms Wynne:** OK.

**Mr Malkani:** Obviously the corrected information should be clearly identified, but the old information should stay as well.

**The Chair:** Now the official opposition.

**Mr Flaherty:** Thank you for your presentation, sir. My questions are not specifically directed to the hospital but more generally to the bill, and you may or may not be able to assist.

The scheme of the bill creates something called health information custodians, which are defined in section 3. These are people and institutions that are allowed to collect personal health information. Do you think it's appropriate for a politician to have access to the personal health information of an individual in Ontario?

**Mr Malkani:** Depending on the purpose of gathering that information.

**Mr Flaherty:** Well, this bill says that the minister may. The Minister of Health and Long-Term Care is defined as a health care custodian, and more than that,

the ministry is. So all the government employees in the Ministry of Health will be included as health information custodians.

It goes further. By regulation, they'll be able—"they" being the government—to prescribe classes of person. That won't be in here; this will be done by regulation under the bill. My concern is pretty fundamental about the individual's right to the privacy of their own individual health records. I heard what you said about fundraising and so on, and I understand that as a concern. But I go again to the right-of-access section of the bill, which is section 49, and again I see in clause 49(1)(d) that the government will have regulatory power to prescribe a class or classes of health information custodians with respect to which the individual will not have the right of access. So this bill says to individuals that the government, by regulation, is going to be able to deny you access to your own individual health record. Do you think that's appropriate?

**Mr Malkani:** I didn't read in here—and I might well have missed it—that the individual would not have the right to access that same information. I did recognize the piece about the government having the right to access some of it.

Again, I didn't see any difference between what this bill provides government and what the current Public Hospitals Act that has been in place for many, many years provides. Again, the intent has been to provide information for cancer research and public health research and that sort of thing.

**Mr Flaherty:** I don't, and I'm sure you don't, have a problem with de-identified information being used for such purposes. The difficulty here is that we're dealing with identified health information—your file, my file about our health information—and the government being able to say that I can't see it or you can't see it, and being able to do that by regulation, not openly in the Ontario Legislature. Anyway, enough; I'll let my colleague get a question in.

**The Chair:** You have about one minute left.

**Mr Ouellette:** Being a border community, the legislation has no ability to stop you from gaining information outside of the jurisdiction. So even if, for patient care, individuals were referred out of the province, do you see yourself as gaining information outside of the province as a method of fundraising? More importantly, you've already stated, and other groups have stated, that the fundraising costs could be as much as half a billion dollars to the industry as a whole throughout the province. Do you see other border towns, such as Sault, Michigan, capturing some of those funds by being able to lobby those individuals to gain funds that would normally go to Ontario hospitals?

**Mr Malkani:** I personally don't think that's much of a concern. The short answer is no.

1430

**The Chair:** Ms Martel.

**Ms Martel:** Thank you for being here today. I want to start with the fundraising as well. Could you tell me how you undertake fundraising now through the foundation?

**Mr Malkani:** We do share with our foundation staff now the same pieces of information I've identified: name, address, phone number. The foundation, long after the discharge, follows up with patients. As part of the relationship-building process we have several communiqués that we send out several times during the year. We invite these potential donors and actual donors back to the hospital for a variety of events to meet the people and visit the programs through that relationship. We have a variety of fundraising initiatives. Some of them are things like a car draw, those kinds of things, and various other programs: galas and so on.

**Ms Martel:** You said you raise about \$800,000 to \$900,000 annually. Can you give the committee an idea of what that would be in terms of individual donors versus a corporation?

**Mr Malkani:** I can give you that roughly. It's about 12,000 to 14,000 individual donors. Is that right, Johanne?

**Ms Johanne Messier-Mann:** Yes.

**Mr Malkani:** That does not include what we get through bequests and so on.

**Ms Martel:** You had said you'd like to be able to share information with people about their ability not to participate in funding by essentially posting signs in the hospital, which is one option. Another option that has been raised with us is that foundations would still be allowed to solicit directly by mail, but include in the letter an opt-out option. Would you be agreeable to that as a way to do it?

**Mr Malkani:** Very much so.

**Ms Martel:** Because you're already mailing to individuals anyway, so it's not an added or extra cost for you.

**Mr Malkani:** Yes, that's correct.

**Ms Martel:** Let me go to the provisions that are called the lockbox provisions. As you can understand, this has been a point of controversy among competing groups. One of the points that has been raised is that the lockbox provisions can essentially be overridden in the case of emergencies or where someone is incapable of making decisions through another in section 37, and that that should then relieve the concerns of health care providers and institutions to be able to provide health care, for example, if someone comes in an emergency situation or if someone comes in with a mental illness and is not capable of making decisions themselves.

Obviously you don't agree with that and you have some additional concerns, so I'd appreciate if you could tell the committee why you don't think that provision covers your concerns but has to go further in terms of essentially not allowing people to block some of their own personal information.

**Mr Malkani:** That provision deals only with cases where the individual is not able to give consent, for whatever reason. Our concern is with what we anticipate will be the larger number of cases where the individual is able to give consent but withholds it, but the information is relevant to the provision of care.

**Ms Martel:** You wouldn't normally be seeing that in an emergency situation, though.

**Mr Malkani:** Not necessarily.

**Ms Martel:** OK.

**Mr Malkani:** Johanne, would you care to add some specifics to that?

**Ms Messier-Mann:** Yes, as a previous nurse—for instance, under lockbox provisions now, people could choose to divulge information to a certain group and not to another group. As the circle of care—and all, as professionals, are bound by their colleges—we are abiding by confidentiality and require that information, both for the safety of the patient and also the safety of the caregivers who are involved in that case. Also, from a technical perspective it would be very difficult to route the information so that this group can find out and that group can't find out. So it's from both a patient safety perspective and a care provider perspective, and we all know that's a big issue in health care these days.

**Ms Martel:** So essentially the answer is not to allow individuals to do that. That is, as I see it, the only answer here to resolve this particular problem.

**Ms Messier-Mann:** We feel the answer is the circle of care. The people who are providing care to the patient need access to the relevant information to provide quality care.

**The Chair:** I believe Mr Fonseca has a question on behalf of the minister. You have 15 seconds.

**Mr Fonseca:** In regard to the fundraising, as an option at admission can the hospital ask something like, "Can the hospital keep in touch with you after your service and seek your ongoing support?" Would that be a viable option to this fundraising issue?

**Mr Malkani:** To the extent that the question would have to be put on an individual basis, it is essentially getting express consent. That's the logistical difficulty that we see.

**Mr Fonseca:** The example that I just gave you, would that be something, at admission?

**Mr Malkani:** That could work. We do have a few questions we put to patients at the point of admission. That could be another question that we put to them. That would be another one of the opting-out provisions.

**The Chair:** Your time is up. Thank you for giving us a chance to come to the Soo. We wish we had time to pay a visit to your hospital.

## GROUP HEALTH CENTRE

**The Chair:** The next group is the Group Health Centre. Welcome to the hearings. Could you give us your name and your position.

**Ms Elizabeth Bodnar:** Good afternoon. My name is Elizabeth Bodnar. I am the chief privacy officer at the Group Health Centre, and I'm accompanied by Tamara Shewciw, who is our senior manager of information technology. We are here today on behalf of David Murray, our president and CEO, who wanted to be here. However, Ministry of Health representatives are visiting



the centre today, so that's where Dave is at this very moment.

The Group Health Centre is an ambulatory care facility in Sault Ste Marie. I would like to begin my comments by thanking you for travelling here to the Soo to hear our comments and concerns regarding this new bill and reassuring you that we have much to offer in terms of experience and expertise surrounding this topic, particularly as it relates to electronic medical records, or EMR as it's affectionately known.

For those of you who are not familiar with the Group Health Centre, it is the health care partnership of the Sault Ste Marie and District Group Health Association, which is a not-for-profit corporation that owns the physical facility, equipment and furnishings and hires all the non-physician staff, and the Algoma District Medical Group, which is an independent partnership of 64 physicians, including 37 primary care providers and a wide range of specialists.

The GHA, group health association, and the ADMG, Algoma District Medical Group, are interdependent entities that jointly operate the Group Health Centre through a joint management committee. As Ontario's largest and longest-established membership-based health organization, the Group Health Centre has been providing care to patients in Sault Ste Marie and the Algoma district for 40 years.

In 1997, we implemented an electronic medical records system that is the largest primary care based EMR in the country. This is a fully functional, comprehensive patient health information system. We have also funded the development of extensive security systems to ensure the privacy, confidentiality and security of our patient information. We have created policies and procedures to guide us in ensuring that the health information we collect is guarded with the utmost security, confidentiality and privacy. We are pleased to see that many of our policies and procedures reflect the principles that are outlined in this bill.

While we were implementing our EMR, we worked with our vendor on technical innovations that included restricted access to categories, such as psychiatry or counselling; an extra lock that can be placed on charts at the request of our patients; access logging, which allows us to see who has been in which chart and when; and handcuffing of users so they can only see what they require to see in order to do their work, which is provide patient care.

Of course, in this field of security, privacy and confidentiality, you are never done, so refinements to our systems are ongoing. Interestingly enough, two years ago, we explored with our vendor a process of information release based on patient consent, akin to the lockbox. This is proving to be extremely complex and expensive. Our seven years of practical experience with the EMR have provided us with knowledge and expertise, and it was best described recently by Michael Decter, recently appointed chair of Canada's new Health Council when he visited the centre in November and

said, "What Group Health Centre is doing with EMR others are still dreaming about."

**1440**

Our EMR is interfaced with existing practice management applications that provide ordering and receiving of diagnostic tests, automated faxing, prescription writing, sign-offs and so on. This fully functioning, integrated EMR, accessed by all GHC health care providers simultaneously, provides a truly collaborative medical practice. It allows for appropriate acute care for patients with complex chronic illnesses when the primary provider is not available.

The EMR gave us a tool to effectively manage chronic diseases and improve the quality of life of our patients. We have, with the hospital and the CCAC, been able to reduce hospital readmission rates for congestive heart failure patients by 58%. We have 2,717 adults with diabetes who receive enhanced diabetic management and the largest community anti-coagulation clinic in Canada, soon to reach almost 700 patients. These are all made possible by our EMR.

Bill 31's schedule B acknowledges the need for exception to express consent for health care teams who are sharing health information for the purposes of providing health care or assisting in providing health care, which is the basis of our chronic disease management program that produces the aforementioned results. It is reassuring that the McGuinty government supports the GHC philosophy of health professionals sharing information, leading to improved patient care and safety while giving the patients the right to control their personal health information.

This bill also specifically states, "for research conducted by the custodian," as a permitted use, to be performed in accordance with a research plan approved by a research ethics board. We are satisfied that we already conform with this requirement at the Group Health Centre.

We commend you for drafting a provincial bill that serves the needs of the health care sector better than PIPEDA, the federal act, as it was too general and commercially focused, leading to confusion and lack of clarity about how, and in some cases even if, it applied to health care. PIPEDA is also difficult to interpret when applied to research.

In closing, we want to ensure that as Bill 31 is being examined, and although we anticipate minor changes and additions, we feel strongly that privacy law as it relates to health care should not impede coordinated care and there should be a direct reference to the circle of care and the sharing of health information in teams, as that is what the Group Health Centre's model of excellence is based on.

Thank you for your time and attention. If you have questions, we will both answer.

**The Chair:** We have 11 minutes left, which will be divided among the three groups. I am going to start with the official opposition.

**Mr Ouellette:** Thanks very much for your presentation. It appears from the sound of it that you are ready



to go, so the time frame as found within the bill would be acceptable. Most of the other groups have indicated that that time frame would not be acceptable. So you don't have a problem with the time frame?

**Ms Bodnar:** We were prepared to go with PIPEDA January 1. We are implementing training programs. We had a launch in November with our staff day, but we agree that it would probably be six months to get everyone trained.

**Mr Ouellette:** So the time frame for implementation should be longer than what's considered here.

**Ms Bodnar:** I think so. Six months.

**Mr Ouellette:** Also, regarding the impact, I think your words were that it proved to be very expensive for you. Do you have any ideas on what the costs would be to health care as a whole in this area to implement this?

**Ms Tamara Shewciw:** Health care for us?

**Mr Ouellette:** For yourselves.

**Ms Shewciw:** Actually, when we looked at PIPEDA, we went through what was required for PIPEDA and did a threat-and-risk assessment and so on. It was just under \$1 million for us, which is a lot for an organization our size.

With this new bill, there's a lot of implied consents, and so on, that will help that, so I can see the costs coming down. But there's still a cost in terms of training and systems work, in terms of redoing with our vendors some of the things that work in there now to make sure that they comply with this legislation.

**Mr Ouellette:** OK. Thank you.

**Mr Flaherty:** Congratulations on running a successful group practice in Ontario, which we hope to see a lot more of. Does your group health association do any psychological testing or assessments?

**Ms Bodnar:** We have a psychiatry department and a counselling department, yes.

**Mr Flaherty:** Can you think of any reason for saying that a patient—this is what this bill says—will not have right of access to the raw data from standardized psychological tests or assessments? It's in section 49 of the bill.

**Ms Shewciw:** And your question is?

**Mr Flaherty:** My question is, if I have psychological testing, or my child does, at your clinic, why shouldn't I or my child have the right to see the test results?

**Ms Shewciw:** I know that within the college—it's shown in legislation as well—if the physician or the practitioner feels it would be detrimental and could cause you harm, then they do not have to show it.

**Mr Flaherty:** Then they have to say no, and then I can go to court and get an order that they produce the record. But that's not what this bill says. This bill says that I will not have the right to raw data from standardized psychological tests or assessments. It says that an individual has a right to access to certain personal health information, but not to a record that contains—and that's one of the listed items.

Quite frankly, I've seen this in draft legislation before and I've never understood it. Why are we giving this

special privilege to psychological testing, as opposed to ordinary medical and health care information? It must be some lobbying by somebody that gets this into this bill. I'd like to see it taken out, because I don't understand how a government should be saying to any family in Ontario that they should not have the right to access. I raise it with you because I know you run a big operation and you have that kind of information.

**The Chair:** Ms Martel.

**Ms Martel:** I'm interested in your lockbox provisions. You said an extra lock can be placed on charts at the request of patients. So essentially, your patients now have the opportunity to determine which information they want disclosed or not. Am I correct?

**Ms Shewciw:** Yes and no. At the very beginning, back in 1997, it was akin to an office having a special cabinet where they would put patients' files. So you had a medical records department and then there were some—you know, the movie star who comes to your clinic: "I don't want my chart in with all the other charts," so you put it into a special spot. What we did was to copy that in the program, in the software, to do exactly that. So what happens is that if this person comes forward and says, "I'd like my chart locked," there is a key put on the chart. Any time anyone has access to the chart, they have to go and get the key. Then we know so-and-so is trying to get into this movie star's chart. Is that reasonable or not? In the circle of care now, you have a user ID, you have a password and so on. You're providing care, so you have access to the chart. It just gives it an extra lock, and a key has to be provided to open up that chart.

**Ms Martel:** At what point can that be opened if the patient has expressly said they want their information to be locked?

**Ms Shewciw:** With the locked chart it's a little different from the lockbox. With the lockbox, you're saying, "I don't want this information passed along." In this case, what the patient is saying is, "Can you please lock it? I just want to know that there's this additional security on my chart that not just anybody can get in; I'll know specifically who's getting in because they have to ask for that key to open that chart."

We were exploring the lockbox as well. It gets very complex. I sat down with a vendor—this was two years ago—and it was actually to see if we can pass on information to the hospital; it was like, "Let's pass it on." Because our circle of care is such that it is the Group Health Centre, when you roster with us you are getting this circle of care. So it's providers, ancillary providers and so on. But now this is extending past our circle of care. So the patient can either say, "Yes, I consent to that," or not.

We started looking at it; the theory is great, and that's what we were looking at. Two years ago we said, "We need this." But when you start looking at the logistics, "Don't pass my information along to that physician—everybody else can see it—and only for that type of visit and only from those dates," how do you start setting that



up? Even though they've now said, "I don't want physician X to see it because he's my neighbour," or "I don't care for him; don't show him my chart," how do you know who the next physician will be to have access to that? Are you always having to inform patients that these are all the new physicians who now can access the chart or might be accessing the chart? It just becomes a real logistical nightmare to try to get that set up in the system.

1450

**Ms Martel:** So over and above any concerns about care and the provision of care, the practical reality of trying to implement that provision—

**Ms Shewciw:** It's going to be really tough. One of the ways that we were looking is even to just say that it's all or nothing. Either you lock your chart, so the locked chart and the lockbox become one—"I'm locking my chart; I don't want anybody to see it unless they have consent from me at that time"—or ahead of time, say, "I consent to these people to see that information." Then it's an all or nothing, not piecemeal: "I only want my progress notes and not my consult letters," or whatever. It's all or nothing. But then what happens is the patient has to—and they have to have some responsibility here too. If you want your chart locked, when you present yourself down at the hospital and there's nobody to open the chart—we're not a 24/7 operation. So if you go at night, who is going to unlock your chart?

**The Chair:** Time is up. The government side.

**Mr Leal:** Back to Elizabeth. Being new to provincial politics, I guess at the end of the day you want Bill 31 to be the best piece of legislation that's ever been put forward to the people of Ontario.

Consistently through submissions that we've received there's been a lot of comment about the federal legislation, PIPEDA. I guess "shortfalls" would be a way to describe it. Could you just describe to me some of the shortfalls you see in PIPEDA that you think we should make sure don't occur in Bill 31?

**Ms Bodnar:** I think, in looking at PIPEDA—and my comments describe the confusion that I know lots of hospitals felt: "Does it apply to us; doesn't it?" It specifically applied if you did fundraising, and PIPEDA was very specific about research: Everything needed a consent.

In our organizations and in the very nature of health care and the way that we see health care being provided in this province and in the country, we are all looking to improve care. I think Mr Malkani spoke to the fact that quality improvement is a big part of what we do. So in order to apply PIPEDA in the health care environment—it just wasn't specific enough. We felt that it was too confusing to apply.

When you're talking personal health information, as this bill does, there's an understanding that in the circle of care there's an implied consent by patients, particularly in our environment where there are many different disciplines, that if they become patients of the Group Health Centre, they are aware that once their physician

sees them and refers them to a physio, that physio will be putting information into their chart that goes back to the physician. It's a comprehensive chart. It's more manageable in health care. I think PIPEDA was just too commercially based, not focused enough.

**Ms Shewciw:** The whole issue of implied consent—with this, it's implied consent: "Yes, I'm presenting my information to the practitioner and I am consenting that he will pass it on to the appropriate people, not that any time he makes a fax he has to get my consent or any time he passes on a consult he'll have to get my consent." It just would make health care stop.

**Mr Leal:** Thanks for your response.

**Mr Oraziotti:** Thank you very much for the presentation. We're certainly fortunate in our community to have a facility like the Group Health Centre, which was recognized by the Romanow commission. It's certainly strongly supported by our party as a model of health care delivery.

I'll get to the point here: How do doctors at the facility feel about this proposed legislation, and how much of what is already being done at the Group Health Centre is consistent with the proposed bill?

**Ms Bodnar:** We had our physicians who are on our EMR user committee—the EMR user committee was started even prior to our implementation of EMR. We are partners—the association and the Algoma District Medical Group—in everything that we do. They reviewed the bill, along with us, and they are in agreement with the comments that we have provided to you. They believe in the team approach to care; that's why they practise in the environment that they do. Tamara works much closer with the physicians on the EMR user committee, but we definitely have had them review the bill. They are supportive, and their comments are reflected in what I presented today.

**The Chair:** Thank you. A job well done. Keep up the good work. Once again, thank you for coming.

**Mr Fonseca:** Thank you very much to the Group Health Centre for being so proactive.

I do want to call up some Ministry of Health and Long-Term Care staff to address some of the concerns that Mr Flaherty brought up. They could shed light on those.

**The Chair:** Do you want to clarify some of the questions that Mr Flaherty had before we proceed with the next group?

**Ms Carol Appathurai:** Yes. I'm Carol Appathurai. I'm the acting director of the health information, privacy and sciences branch. With me is Fannie Dimitriadis, legal counsel with the ministry.

I'd be happy to answer any questions.

**Mr Flaherty:** The question I raised with the last group about psychological test data: Why does an individual not have the right of access in this bill to that data?

**Ms Appathurai:** I have to confess to asking that same question myself. This was raised with us and requested to us by the psychologists and, I believe, the psychiatrists as



well. What they're saying there is that you have, of course, the right to the results of your tests, but you do not have a right to look at how the various parts of your tests were analyzed and evaluated, because that will impact on the results the next time you take the test. So yes, you do absolutely have access to the results of the tests, but not the to detail of how it was measured and evaluated. What marks you got in each section, how those sections are marked—you don't have access to that.

**Mr Flaherty:** With respect, that's not what the section says. The section says "raw data from standardized psychological tests or assessments." If anyone has any familiarity, as I do, with psychological testing, having spent a good deal of my life in court and looking at psychological testing, it's drawing things and there are all manner of psychological tests. The raw data is not the interpretative information; the raw data is the test itself as performed by the patient. It's very interesting that we have a professional association being patronizing to the people of Ontario. But this raw data has nothing to do with assessment. It is the actual test data. I hope there's a better reason for it being in the bill than that given to you by them.

**Ms Appathurai:** It may be their differing understanding of the reading of "raw data." I think, in their understanding, raw data refers to the test as it is evaluated and the comments in each section. We can certainly go back to the psychologists and get clarification on that.

**Mr Flaherty:** I do appreciate that.

My other, broader, concern, which I haven't had an opportunity to raise here, is the exclusion of quality of care information, in clause 49(1)(a), from the patient's right of access. What on earth is the justification for saying to a patient, a citizen of Ontario, that the Legislature is going to tell you that you do not have the right to your identified health information that relates to quality of care?

**Ms Appathurai:** Quality of care information is specific information, and I'll give you a little context. What happens in a hospital when there is an incident or a near miss is that a quality of care committee, which is composed of various professionals within the organization, gets together to look at, to discuss, to analyze the incident or near miss and determine how it can be avoided in the future and what needs to be put in place in terms of procedures at the system level or even at the individual level to ensure that this incident does not occur again.

1500

Those discussions are quality of care information, and you will note in schedule B of this legislation, the Quality of Care Information Protection Act, that protection is given to quality of care information only if the facts of the incident are in the patient's file to which the patient does have access. What the patient doesn't have access to are the opinions and discussions on that incident.

**Mr Flaherty:** We could debate that a bit in terms of the breadth of the definition on page 86 of the bill in schedule B, but in that definition there is also clause (c), which says, "satisfies the criteria for quality of care

information specified by the regulations." So here we have a regulatory power which is going to be given to the government to define what quality of care information is. What on earth does that have to do with what you just described?

**Ms Appathurai:** That is meant to be quite privacy protective. What we don't want is various hospitals springing up quality of care committees and protecting information that should not be protected. So through the regulation, what we will be able to do is develop criteria—and of course you know there's an open regulation-making process—that clearly define and constrain what information will be protected.

**Mr Flaherty:** That's not the way this is—

**The Chair:** I think we've gone far enough. I should have asked for unanimous consent before I got you to come to the table. The next time, I'll do that. I have to apologize. But again, could you give us some clarification of "raw data," what it really means? That's what you said a little while ago, that the former minister said. Thank you.

#### CHILDREN'S AID SOCIETY OF ALGOMA

**The Chair:** The next group is the Children's Aid Society of Algoma, central district. Welcome to the standing committee on general government public hearing on Bill 31. Could we have your name and your position?

**Ms Trina Colizza:** My name is Trina Colizza, and I am representing the Children's Aid Society of Algoma. I am here with Tracy Willoughby, who is the director of services from the children's aid society. We are here on behalf of Jim Baraniuk, who was unable to attend, as he is in Thunder Bay today.

Tracy's responsibilities as the director of services are to oversee the core protection services for the district of Algoma, which in our case extends from Hornepayne down to the border of Sudbury-Manitoulin, which is around the area of Spanish. Tracy oversees all of the protection, from the commencement of the first face-to-face visit to the time the family file is closed, as well as the legal components with our in-house counsel.

My responsibilities as the manager of resources are to oversee the prevention services that are in place prior to children coming into care and then the residential component of the children's aid society, which essentially manages the children in foster care, the foster care system itself, the adoption probation and the finalization of the adoption services.

We would like to say at the outset that we have only had the opportunity to have a preliminary review of this document. We are part of a large organization that will be speaking formally on this, but what we'd like to do today is present a few of the themes that we have researched over the last number of days. So we apologize for not being more proficient in the actual piece of legislation as it stands right now.



**Ms Tracy Willoughby:** Several coroner's inquests which occurred in 1997 and 1998 examined the deaths of children receiving services from children's aid societies across Ontario. These inquests resulted in recommendations directed to more open sharing of information by professionals, including those involved in health care, and by persons in the community with children's aid societies, as well as by CASs with professionals and individuals in the community. The inquests heard repeatedly how there were legal safeguards that protected confidentiality, sometimes at the expense of the safety, protection and best interests of children.

OACAS, our professional association, which represents 51 child welfare agencies across the province, supports the development of legislation that regulates the collection, use and dissemination of personal health information. As you are aware, children's aid societies must be able to access health information readily to properly fulfill our mandate of protecting vulnerable children. Furthermore, children's aid societies may need to access and/or disclose personal health information for specific purposes related to their statutory functions in protecting children.

We are submitting two inquest reports that will outline recommendations from two coroner's inquests for your consideration.

We do wish to draw to your attention part VIII of the Child and Family Services Act, which contains specifics regarding privacy of children's records and family records, and also to highlight that this part within the Child and Family Services Act has never been proclaimed. This section includes important matters of privacy, including access to records, provision for disclosure of records, consent to gathering and release of information related to service delivery to children, protection from liability, and codes of procedure for service providers. We suggest that this part of the Child and Family Services Act should be reviewed, updated as necessary and proclaimed so that the privacy of sensitive information about children and families can be protected. We have also included in our submissions part VIII of the CFSA.

**Ms Colizza:** The record requirements of children's aid societies are extremely complex and contain blended types of information, only some of which is personal health information. The process of separating personal health information from other forms of personal information, as proposed by the draft Personal Health Information Protection Act, could be complicated by the fact that personal health information is broadly defined as, among other things, identifying information that "relates to the physical or mental health of the individual." As a result, CASs could end up applying different rules to various parts of their files. Simply put, this would create an administrative labyrinth and produce unnecessary work within a resource system that is already overtaxed. We have brought a copy of the ministry standards and guidelines which we are required to strictly adhere to from the initial point of contact to file closure. We hope

this will provide you with a context of our responsibilities as set out by our ministry.

A CAS would be subject to the general limitations prescribed in the draft privacy act, which would represent additional encumbrances for the CAS in the course of discharging its child protection mandate. This would cause difficulties for a CAS in the course of carrying out its responsibilities as a statutory parent on behalf of children in care, which include the obligations to assess and then meet the medical, dental, psychological and psychiatric needs of such children, including the provision of examinations, assessments and recommended treatment in a timely fashion, and the recording of all such examinations, assessments and treatments.

Under the new disclosure obligations, it would appear that a child under the age of 16 years and in the care of a children's aid society whose personal health information records were in the possession of a health information custodian would have the authority to consent or withhold consent to the disclosure of his or her own records to a third party if he or she has the requisite capacity, regardless of the position being taken by the children's aid society. Under these new rules, there would be a presumption that the child had such capacity regardless of age. This could cause difficulties for a CAS that was of the view that such disclosure would be detrimental to the child or to some third party.

Under the provisions of the draft act, a CAS would be required to destroy or delete a record of personal information or to de-identify it after the purpose for which the information was collected has been fulfilled unless the CAS could bring itself within the exception that it "reasonably requires the record for purposes related to its operation." Given the fact that CASs are institutional litigants who often rely upon historical documents and records to defend lawsuits and to initiate protection proceedings on the basis of past parenting history, it would be highly prejudicial for CASs to be bound by these personal information record destruction requirements.

1510

**Ms Willoughby:** In summary, we wish to acknowledge that we have had the opportunity to conduct only a preliminary review of this legislation. OACAS will be submitting a written response pertaining to agencies governed by the CFSA in Ontario.

One area generating discussion in child welfare that we would like to briefly highlight is as follows: that at the very least CASs be exempt from the application of the draft Privacy of Personal Information Act, 2002, until such time as CASs are covered by either updated or proclaimed amendments to part VIII of the CFSA or additional CAS-focused amendments to the draft, and that, further, the task be prioritized to eliminate service barriers that are required to ensure the safety of children.

In the final analysis, any framework for the collection, use, disclosure, retention and disposal of personal information must facilitate and support information sharing for the purpose of protecting children and ensuring their



best interests and well-being. It would be of concern to the field if any proposed legislation in this area served to impede information flow or compromise the mandated investigative function of child protection workers.

**The Chair:** We have nine minutes left. I think it's time for—is it the NDP? OK. Shelley Martel.

**Ms Martel:** Thank you for being here today. I wanted to focus on page 3. I have questions for both paragraphs, but let me deal with the disclosure obligations. I'm not sure that I understand the concern with respect to the disclosure obligations of allowing someone under 16 to be making choices or providing consent regardless of their age. What's your specific concern?

**Ms Colizza:** For the children who are in care of the society, it is important for us to be able to find an appropriate placement for them in terms of their residential placement, and also in terms of the counselling and services that they are required to have. What we would be concerned about is, if there were an assessment and the child did not wish to disclose the contents of that assessment to us, that that might impede the treatment or the appropriate residential placement for that specific child.

**Ms Martel:** So the concern is not so much that there might be a lesser right for a child in care.

**Ms Colizza:** No.

**Ms Martel:** That's what I thought you were going to answer. OK. So it's a concern that information that would be relevant to ongoing treatment might not be disclosed.

**Ms Colizza:** Right.

**Ms Martel:** OK.

If I go to the paragraph just above that, where you're talking about concerns that it would make it more difficult for CAS to discharge its child protection mandate, can you give us some examples, or an example, of what the reference is there?

**Ms Colizza:** I think this particular paragraph would refer to the children in care, whereas oftentimes children come into the care of the society without our having much information related to their background. In order for us to ensure that there hasn't been neglect or a serious health concern—perhaps they have never seen a physician—or medical or psychiatric assessments that we're not aware of, then we would not be able to, perhaps even in court, discuss our protection position to ensure that those children are maintained in care and receive the appropriate services they need. Does that answer—

**Ms Martel:** It's the limitations, when you're talking about the general limitations. Maybe I just haven't read this carefully enough. I thought that most health information custodians would have to disclose to CAS, and perhaps that needs to be highlighted in the legislation. That would deal with your concern then.

**Ms Willoughby:** Yes. I think it needs to be clearly outlined. What we are finding currently with other legislation is that community service providers may often hide behind legislation to protect or withhold information in their own records. So I would certainly support a clear

definition and guidelines to the access and disclosure of records.

**The Chair:** Now the government side.

**Mr Fonseca:** I'd like to thank the Children's Aid Society of Algoma for their presentation. Currently, are the adolescents in your care given the opportunity to consent to the release of their health information?

**Ms Colizza:** We are required at this point in time to—we do ask all our children over the age of 12 to consent to the release of information, or the sharing of information as well.

**Mr Fonseca:** So that practice is already in place?

**Ms Colizza:** Yes.

**Ms Willoughby:** That practice is also outlined in section 8. So proclaiming section 8 would legislate the disclosure and transmittal of those records as well.

**Ms Wynne:** So it's only section 8 that you want to take precedence over this bill? It's section 8 that you're concerned about? Are there other parts of the Child and Family Services Act?

**Ms Willoughby:** To our understanding in reviewing material from OACAS, that is certainly one of the more important issues that comes across, and how to have those two pieces of legislation work together. But yes, we would be supporting the proclamation of section 8.

**Ms Wynne:** When is that submission going to come to the committee? Is it going to come soon?

**Ms Willoughby:** To my understanding, OACAS is just finalizing their submissions, so that should be coming from them very soon.

**Ms Wynne:** Just in terms of the timing, it's important that we get it so it can be analyzed and it can become part of the discussion when we go through the clause-by-clause.

**Ms Willoughby:** Yes.

**The Chair:** Mr Ouellette.

**Mr Ouellette:** Thanks very much for your presentation.

We've heard from other groups that there's been a substantial amount of cost to train individuals to make sure that their operations are going to be able to handle the bill, should it pass. Have you looked at training costs for your operations? It's more than just medical that you take care of. How would that impact your agency, for example?

**Ms Willoughby:** Right now we don't have a cost calculated. However, children's aid societies in Ontario are governed by a funding framework, and certainly that funding framework would not provide us funding at this time for a particular position to disseminate information or disclose records. That will be one area of concern for all CASs in the province.

**Mr Ouellette:** How do you anticipate handling it if you do not receive an exemption, as you've asked for? How is that going to impact you, or how are you going to be able to move on with the information?

**Ms Willoughby:** On the funding?

**Mr Ouellette:** Yes.

**Ms Willoughby:** That would then be up to each agency to take out of their baseline dollars and to remove child protection workers to facilitate this.



**Mr Ouellette:** Being that a lot of the youth you handle are placed in different areas, do you find that there may be difficulties in placing—would you have any draft amendments? Do you figure the Ontario group is going to bring those forward?

**Ms Willoughby:** Yes.

**Mr Ouellette:** I think those are all the questions I have.

**The Chair:** Thank you for your presentation, and keep up the good work you're doing for the future of our kids.

1520

### ALGOMA HEALTH UNIT

**The Chair:** The next group is the Algoma Health Unit. On behalf of the standing committee on general government, I want to welcome you to this public hearing. You have 20 minutes. You can take the whole 20 minutes or leave us some time for a question period. Could you give us your names, and positions.

**Dr Allan Northan:** I'm Allan Northan. I'm the medical officer of health for the Algoma Health Unit.

**Mr Jeff Holmes:** Jeff Holmes, business administrator.

**Dr Allan Northan:** I'll just say a few quick words. Jeff is our business administrator and deals with a lot of our information issues. He'll make most of the presentation. We will leave you some time for questions.

There are two major areas that we are going to look at. You've probably heard both of them in your travels around the province and here today—at least the second one. As a municipal-provincial organization we're covered by MFIPPA at this time and it's worked well for us in terms of most of the issues that come forward with PHIPA, so adding another piece of legislation is something that we're concerned about dealing with.

Related somewhat to that is that there will be administrative costs related to setting PHIPA up. We don't mind that if that happens, but we don't want to take those costs away from service. I guess we would ask if there is money to support any of the costs of implementing PHIPA if we do have that come forward.

From here, I'll let Jeff make the presentation around those two points.

**Mr Holmes:** We'll just give you a few comments on where our perspective is coming from—our position and our rationale on this presentation to Bill 31.

The Algoma District Health Unit serves approximately 20 municipalities across the district. Essentially, we have four service streams: public health protection, disease prevention, individual health promotion, and we're also a sponsor for a variety of community health programs, some including mental health and addiction services and infant development services.

The primary act that we are governed by is the HPPA, the Health Protection and Promotion Act. It has a series of mandates and guidelines that outline the standards that we are required to meet with respect to the service streams.

As Dr Northan has already mentioned, as a result of our alignment with municipalities, a fair number of the provincial health units are actually part of municipal government. We are covered under MFIPPA. Our service structure basically has personal health information, but then we have a lot of information that one would conclude the public has a right to as well. So we have this two-pronged approach as to how we manage our information.

Our position in terms of private information is that we rely heavily on the legislation to protect personal health information. We classify a lot of our clients as vulnerable: clients of young age; clients in vulnerable situations, whether financially, educationally, the social environments they have been raised in, mental health issues, addiction issues. A lot of these clients come to us as they feel that we have this protection and privacy safety net surrounding our services. Some of the things they come forward with would be extremely embarrassing if that information came out in an inappropriate manner. So we use that to give that credibility to those people. As a result of that, our policies, procedures and practices are designed to ensure the safety net that we offer these vulnerable clients.

In our humble opinion, MFIPPA has worked well. It supports the public right to information, but it also requires us to look at the privacy rights of the individual client and the family. This is a constant that we are always debating: Is the public right to this information greater than the individual's privacy?

Essentially, in five words or less, we recognize that this legislation applies to a lot of other health care institutions and there are other issues that you've heard a lot about today and, I'm sure, elsewhere. We believe, and this is in discussions with the Toronto public health board as well as other health boards, that we would be excluded from this legislation because of the requirements under MFIPPA.

Our greatest concern is having two legislative acts governing how we manage our personal information. If there were any requirement to take new principles in this proposed legislation into consideration, we would suggest that you enhance the protection of individual privacy. Part II of MFIPPA may be a good way: taking some of the principles that smarter minds than mine will probably resolve and incorporating them in part II of MFIPPA. From our point of view, that would be a more efficient way of dealing with some of the designs around the legislation.

Again, in our opinion, MFIPPA has served the agency well in the use and disclosure of information. In our opinion, we believe MFIPPA deems the disclosure of personal information as an invasion of personal privacy, and that's why we choose to approach our business from that point of view. Again, as I said earlier, it's important to provide that safety net for our vulnerable clients. To date, we have no evidence that MFIPPA is not working well. Again, there's a concern that a second statutory requirement would only affect part of what we do, so we would still have a requirement to run part of our business



under MFIPPA and part of our business under the provisions in Bill 31. We would see this as adding additional complexity to what we do already, and it definitely adds new costs.

Most of our programs have very little funding support. The management of personal health information—we have virtually no automation in terms of our health records. Most of it is manually kept. Most of it is in multiple locations in multiple files, depending on the program. We have spent considerable time and resources pulling this information together in a way that allows us to manage it a lot more efficiently. We've also spent a fair amount of time understanding the various demands for information that we receive literally on a daily basis. We are often intermediaries in cases where there are custody battles, child protection issues, requests for information from a public access point of view. CAS and other agencies are constantly requesting information. The legal community—we're constantly dealing with subpoenas and things like that.

As a result, all that has to be filtered through our MFIPPA practices to ensure that the public right to this information or another agency's right to this information is governed accordingly versus the rights of the individual. These are the additional costs we're talking about: that process, those practices, understanding what our legal responsibilities are toward the agency; the duty to report versus the duty to protect the individual requires a knowledge management effort in the agency, and it requires considerable advice from the legal community from time to time, which adds to costs. Again, that's why we believe this new legislation, if added on top of MFIPPA, would just increase that cost burden.

To conclude, we feel we should be exempt from this new legislation. In terms of the quality of care information, we really have no comments on that part of the legislation. All of this is respectfully submitted, and we thank you for your attention.

**The Chair:** Thank you. We have nine minutes left, which is going to be divided among the three parties. Any questions from the government side?

**Ms Wynne:** I have, thank you. I'm thinking about the federal legislation, PIPEDA. Will you not be required to comply with that?

**Mr Holmes:** No. What we're looking at are commercial activities or our cost for services. Any fees we charge are purely a cost-recovery method, and very little of what we do is subject to any type of financial transaction. So from that point of view, we really don't see any requirement for us to comply.

**Ms Wynne:** So you won't be asked to make any changes under that?

**Mr Holmes:** That's our basic opinion at this point in time. We haven't received any great direction from head office yet on this, but that's our position at this time.

**Ms Wynne:** OK. Thank you.

**Mr Fonseca:** I'd like to thank the Algoma Health Unit. Thinking about SARS and with everybody's eyes on public health units, do you have some information for

this committee in terms of the flow of information within the health system to support public health and how that would work?

1530

**Dr Northan:** It's very difficult. I guess if you get a lot of cases, people can get lost in the numbers, but if something is starting out, whether it's SARS or whether it's one or two cases of meningococcal meningitis or whatever, we're aware of the situations, because those have to be reported to us as public health units. Then it's that whole thing about do we report to the public to warn them about some risk that they might have and how do we protect the individual?

I always wrestle with this as the media call me and say, "We hear we've got an 18-year-old teenager. Can you tell us what's going on?" I can't talk about somebody's personal situation, yet I do have a duty to, in whatever way, warn the community if there is a risk that might be in front of them. So that gets difficult.

If you go into something more complicated like SARS, if we've got cases arriving every day and we try to comment, "We've got two new cases today, three new cases," they say, "Are they from such and such a school, because my child goes there?" Do we say, "Yes, they are from that school," or "No, they're not"? Pretty soon you start to define who the people are. What right do they have to know about those cases and their personal misfortune versus what right do they have to know that to protect themselves? That's a difficult one to deal with. I'm not sure if this legislation helps us or hinders us with that.

If it really restricts us from saying too much, I guess then maybe the public is put at risk. I think we can probably get around that balance, but we have to be careful, because it's possible, with the kind of legislation that's coming forward, somebody could say, "By the information you released to the media to warn the community about a risk, you've exposed my personal health information. Therefore I am taking action against you." I'm not quite sure how that would work out.

**The Chair:** Now Mr Flaherty.

**Mr Flaherty:** Thanks very much for the presentation and for your obvious sensitivity to the rights of individuals in this province as opposed to the rights of the government to have a look at what goes on in our private lives.

In what way do you think the—all these acronyms; governments live on acronyms. There are no bonuses, so we hand out acronyms.

"MFIPPA, part II, 'protection of individual privacy' be 'enhanced' if required to accommodate the new principles introduced in Bill 31." Could you elaborate on how it could be enhanced?

**Mr Holmes:** I think it's more of a process that we would recommend you follow. We're really not versed well enough to suggest any enhancements. The whole point of that was that if smarter minds than mine said, "There's a handful of new practices and principles that we think are good for the citizens of the province," we



would suggest that you park them in that section of the legislation as opposed to creating a new act that requires a whole new effort on our part to understand it and implement it.

**Mr Flaherty:** One of the challenges with this proposed legislation that's in front of us, this bill, is that it begins from the wrong principle, in my view. The principle ought to be that the owner of personal health information is the individual and that, as you have set out here, "MFIPPA deems the disclosure of personal information an invasion of personal privacy," and the exceptions ought to be holders of that information handing it out to other people, and so on, rather than the main thrust of the bill, which is what we see here.

I don't see an adequate concern for the rights of the individual. I see a great deal of concern for the rights of the bureaucracy, for the rights of record-holders, for the convenience of people working in the health care system, all of whom we respect because it's challenging. But I don't see the respect for the individual, saying, "Those records are your property. They don't belong to this hospital or this clinic or this social service agency. They belong to you."

I admire you for the emphasis on the invasion of personal privacy. I'd commend to the parliamentary assistant and the people from the Ministry of Health that it should be in this bill that people have an absolute right to privacy of their individual health records, except for very closely defined circumstances, and that violation of that right is an invasion of their personal privacy, giving them a cause of action against those people who do it.

**The Chair:** Now Ms Martel.

**Ms Martel:** I want to go back to PHIPA, because this is not clear to me. I guess your own association has not given you instructions about whether you have to comply. You don't know if you're specifically exempt from the federal legislation.

**Mr Holmes:** I've not received any opinions.

**Ms Martel:** OK. The call on us today, which would be to exempt public health units from this particular legislation and continue to work with municipal legislation—is that the position of the Association of Local Public Health Agencies and the directors of health?

**Dr Northan:** No, it's just our opinion coming forward as the Algoma Health Unit. I can't really speak for the rest of the province. You've perhaps heard presentations from others, and I'm not sure if you got the same response or if you're getting a mixed bag on that.

**Ms Martel:** Actually we haven't heard from any other public health units. That's why I was wondering if this was going to be a consensus.

Do you make requests for personal health information? You certainly said near the end that you receive daily requests, and you listed a number of sources. On the flip side, do you do that? If so, are the provisions under which you make requests for information also outlined in the Municipal Freedom of Information and Protection of Privacy Act?

**Dr Northan:** I'm trying to think. I know we get a lot of requests from people for information we have about

them, but I can't recollect—Jeff, you handle our information—that we've actually asked in reverse.

**Ms Martel:** So from your perspective, as you look at the bill, you feel quite confident that any of the requirements around protecting people's personal health information can be met under the current requirements? You've not had complaints, there has not been disclosure, there's no track record which would indicate otherwise; in fact, the track record is that you've been very good at doing what you're supposed to do under that act to protect people's information, is that correct?

**Dr Northan:** It has worked for us. Because MFIPPA applies to us and probably not to a lot of the other stakeholders that have come forward today, we've had something in place. When we ask for the exemption, it's because of that. Perhaps others don't have that other piece of legislation to act on. It has served us well to this point.

**Ms Martel:** Can you give us an estimate—I apologize for this, because maybe you haven't thought enough about it. You were talking about the duplication in costs. Do you have a sense of what that might mean for your own organization trying to deal with the requirements listed in Bill 31?

**Mr Holmes:** I would think, in the years I've been involved, it could be up to \$30,000, \$40,000 or \$50,000 so far, on an annual budget of about \$10 million. So it's enough to make a dent, and there are some programs where we have zero room to move. There is no money for training, and there is certainly no money for legal opinions. Any time we burst out of the budget, we have to make special requests to get additional funding in all these types of things. A lot of the programs are really tight.

**Dr Northan:** It's certainly an invisible cost, in the sense that if we have to train staff—and most of the \$30,000 is to take staff and make sure they understand the legislation and how to work with it—that doesn't seem like extra cost because we do it out of our existing budget. But what it does is steal service from the client. These staff would be using those hours to deliver service, but now they're doing this. If this is important enough—and we don't argue that it might not be—then we would ask that those costs be looked at so we don't reduce service to the client.

**The Chair:** Thank you for taking the time to come and meet with us today.

1540

#### ALGOMA WEST ACADEMY OF MEDICINE

**The Chair:** The next group is Algoma West Academy of Medicine. On the behalf of the committee, thank you for coming. Your name is?

**Dr Tim Best:** Dr Tim Best.

**The Chair:** You're the president of the Algoma West Academy of Medicine?

**Dr Best:** Yes, sir.



**The Chair:** You have 20 minutes to make a presentation. If you don't take the whole 20 minutes, there will be time for questions by the three parties.

**Dr Best:** Thank you, Mr Chairman and committee members. As stated, my name is Tim Best. I'm a plastic surgeon here in Sault Ste Marie, Ontario, and president of the Algoma West Academy of Medicine, which is the group of physicians practising in this part of Ontario. I'm their elected representative.

I'd like to begin by expressing my thanks to the government for introducing the two acts that comprise Bill 31 and for the opportunity to offer to you my comments today.

This privacy legislation for the health care sector in Ontario, the Health Information Protection Act, and the statutory protections for quality assurance of information, the Quality of Care Information Protection Act, I believe, are long overdue and very welcome by the medical profession. It is a positive step forward.

The confusion created by the federal privacy law, PIPEDA, remains in my opinion largely unresolved. An example of this is that it appears under the federal legislation that physicians are subject to the provisions of that law for their office work but not for their hospital work. As physicians, we feel that a uniform set of rules that applies throughout the health care system is required and that a set of rules compatible with the day-to-day realities of practice should be introduced in this province. We see Bill 31 as fulfilling that.

Another specific provision of HIPA that I'd like to highlight is the issue of patient consent. The federal act calls for express consent, possibly written, for every new use or release of personal information. We feel that this is quite impractical. The HIPA allocation for implied consent based upon reasonable patient knowledge seems to be much more appropriate. I believe that under HIPA my patients would have clear control over their personal health information but that information that I need to provide good medical care would not be blocked by unnecessary bureaucracy and red tape.

The only caution I have in that regard is that I think most physicians are concerned about the notion of the lockbox provision, allowing patients to admit information or to withhold information, although I do appreciate that the flagging of such omissions in the chart at least would advise physicians when information is being withheld even though they wouldn't know what it is. I believe that part of the act should be monitored closely and perhaps at the three-year review a mandatory review of that portion be undertaken.

I also think that the introduction of the data institute to identify patient information before it goes to the government for planning purposes is a very worthwhile initiative. I believe this important step forward should be monitored with a view to expansion into health care research. A privacy tool could be used in the future to reduce the amount and movement of identifiable patient information within the system. In particular, in some areas of research, patients are not necessarily aware of

the uses being made of their personal information, and the de-identification manoeuvre could facilitate valuable study without the movement of patient-identifiable data.

A major criticism I have of Bill 31 is a concern about the extensive regulation-making powers found in the bill. They are so wide-ranging that they allow the government to change virtually any aspect of this law by regulation. I believe this is contrary to the traditional division of legislative and regulatory authority and represents an intrusion of the government's executive powers into the lawful powers of the Legislature. Not only does it create the power to completely undermine the content of the act; it undermines the democratic process of the Legislature. I recommend that this committee review the proposed regulation-making powers closely, with a view to significantly curtailing them.

Implementing HIPA will pose fairly substantial challenges for the health sector. I recommend that the government develop a formal process to coordinate implementation of strategies that involve the privacy commissioner and stakeholders, including physicians. I fear that if the government doesn't do so, the confusion that has been characteristic of the federal legislation may spill over into provincial activities.

HIPA is a long and complex bill, and the government should accept the responsibility for public education. The onus for public awareness cannot be placed upon physicians and other health care providers but should remain with the government.

In closing, I'd like to reiterate my support for the principles established in Bill 31, and I'd like to thank the government for introducing it so early in their mandate.

Certainly Algoma West Academy of Medicine lends their support to the specific comments that have been offered recently by the Ontario Medical Association with respect to line-by-line analysis. I urge you to move forward with the passage of proclamation of this legislation at the earliest possible date. Thank you very much for the opportunity to address you today.

**The Chair:** Thank you very much. We have 12 minutes, which will be divided among the three parties. The next one is the official opposition.

**Mr Flaherty:** Thank you, Dr Best, for your presentation, particularly with respect to the curtailing of regulatory powers. If I had a lot of time, I'd go through every section of the bill and pick out the regulatory powers. But there is, in my view, the bad habit that has grown up in governments over a long period of time of throwing in at the end of sections a broad regulatory power. You read through a section and it sounds all right, and then you get to the end of it. I say this as someone who has chaired legislation and regulations in committee of cabinet for a long time and used to have a lot to say about those kinds of sections.

If you look, for example, at the section that defines, "This part does not apply to a record that contains"—we're talking about access to records of personal health information on page 42 of the bill, section 49—the last part of it says, "Personal health information of the pre-



scribed type in the custody or under the control of a prescribed class or classes of health information custodians." Then you go back, and of course you find that "prescribed," as defined early on in the bill, "means prescribed by the regulations made under this act." There are lots of examples of that in the bill.

I take it, from listening to your presentation, that what physicians want is certainty and efficiency in terms of privacy of information, access to information, disclosure of information. Is that fair?

**Dr Best:** Yes, I think that's a pretty fair analysis. I think also as a general principle that, as medicine is a self-regulating profession, we are concerned when there is a significant bill that affects us that is not directly under legislative control and that would fall under regulatory control. I think the three-year introduction period addressed with this bill is sufficient time that it could be reviewed at the legislative level, and that's where it should be reviewed.

**Mr Flaherty:** Can you see any reason for the Minister of Health to have access to identified health information?

**Dr Best:** I'd have to spend more time to think about that. It's certainly possible. My initial response is yes. In certain health care emergencies, that may be necessary—I'm thinking in the public health arena—but I'd really like to withhold definitive comment till I have more time to think about that.

**Mr Flaherty:** Am I finished?

**The Chair:** No, you've still got 15 or 18 seconds.

**Mr Flaherty:** My experience has been that individuals very much prize the privacy of their health records and have great faith in their physicians as the key protectors of that health information, which is why I wonder about the broad definition of "personal health information" and "health information custodians" in this bill, including the Minister of Health and the people who work at the Ministry of Health, of whom there are countless thousands, as I'm sure you know. Has it been your experience with your patients that they highly value the privacy of their health information?

**Dr Best:** Absolutely. Whether we're dealing with governments or insurance companies or health care providers, I think, sidestepping that slightly, the provisions for the implied consent in terms of physicians' practices are a very positive step and should move forward, partially based upon the faith and trust that the profession so far has been able to uphold with patients as the guardians of that information, and therefore has been able to work for them, maintaining that privacy within implied consent.

1550

**The Chair:** Ms Martel.

**Ms Martel:** Thank you for coming today. Do you feel this legislation is going to create an excessive burden on yourself personally in your own practice, both financial and administrative? Also, do you have any concerns with respect to the offence provisions if one is guilty of disclosure?

**Dr Best:** As stated in my address, I think the first and most important thing the government needs to do with

the passage of such legislation is to take the responsibility to educate people. I don't believe it is correct or desirable for me or my office staff to have the responsibility of educating people on the ins and outs of the legislation as it affects their private information. I believe it's our responsibility to enact it but not to educate about it.

Sorry, the second part of your question?

**Ms Martel:** Can I be a bit more specific? You'll have certain obligations; all physicians would and all specialists who have a practice would, essentially having someone as an agent. You would have to take the time to explain to your patients, if they wanted access to their information or if they wanted to make corrections, how they'd do that. Are those kinds of things going to be too much of a burden for you? I ask this because a presentation that we heard last week suggested that for family doctors it would be so onerous that many wouldn't enter the profession any more. I'm really trying to get a handle on what the significant obligations are that would be so overwhelming that someone might make that actual choice. In terms of the group you're representing—you talked about your speciality, and I don't know what other broad categories of specialists or physicians you represent—is that the prevailing view?

**Dr Best:** I represent all of the physicians in the region. Certainly, any additional paperwork is not welcome. Again, what I would really stress is that I do not think it should be the responsibility of my office staff or myself to do that educational component; it should remain the government's and the Ministry of Health's obligation to do so. If a patient comes to my office and asks for a change in information, or what have you, under the provisions of the act, then obviously it's my responsibility to carry it out. I really understand the spirit that if in addition to our duties so far we had to add in the educational component in order to advise patients—it often takes me more time to go through an informed consent than it does to explain the surgery to the patient at the current time. So an additional burden of information is certainly not welcome.

**Ms Martel:** But you wouldn't want the government to be having a list of your patients in order to do that. So how would that work on a practical level? I'm being conscious of what you're saying, but if under this legislation you have an obligation to tell your patients what the mechanism is to do A, B and C if they want information, you're not going to want the government to do that public education, because that would mean the government having to have access to your patient records in order to fulfill that.

**Dr Best:** Not necessarily. I don't know that it would be obligatory for the government to know the particulars of the patients' issues in order to educate them. I would think that if a patient in my office had concerns about access to their records, or what have you, I would like to have the ability to just refer them to the local Ministry of Health office and they could find out their options from there.

**The Chair:** Now we'll go to the government side.

**Mrs Van Bommel:** Thank you very much for coming today. I want to go back to the regulation-making powers issue that you have concerns about. In the environment we live in today, we have rapid change in the way we collect, process and store data. Do you have any concerns that by entrenching everything in legislation we wouldn't be able to react quickly to changes we would need to do that we could do if we were working with regulations instead?

**Dr Best:** I think that going too far one way or the other has its problems. I think the current version, where virtually everything is at the regulatory level, is incorrect, and I think going in the opposite direction where everything is at the legislative level is also incorrect.

My suggestion would be that before the final proof of this is put out, a very careful review of it be done with parties such as the Ontario Hospital Association and the Ontario Medical Association to determine which are the most irritating factors to have at the regulatory level and which they would prefer to have at the legislative level. I agree with you that if it's all at the legislative level, then it's a prescription for a very slow—

**Mrs Van Bommel:** For inflexibility.

**Dr Best:** Yes.

**Mrs Van Bommel:** Are there any particular areas that you feel should be entrenched in legislation? Can you tell us the types of things you have concerns about in terms of being regulated and that you don't want to do, one way or the other? What types of things are you looking for?

**Dr Best:** Yes. An example would be the provisions that I alluded to earlier in my presentation about implied consent. Those issues are so fundamental to the effective working of day-to-day medicine that that should be protected at the legislative level because—referring to Ms Martel—if I had to have explicit consent for absolutely everything that I do involving patients, which is what the federal legislation suggests, it would at least quadruple the amount of paperwork and slow down the process incredibly to the point where I think it would cost a lot more for this government to provide health care than it does now. I'd see a lot fewer patients per day, and shortages we have in this region would go up dramatically. There has to be a very careful balance between the two, but I think there also has to be a respect for the fundamental principles being entrenched in legislation.

**The Chair:** We have 75 seconds left, and we have two persons left to ask questions.

**Mr Oraziotti:** Thank you, Dr Best, for being here today, and thank you for your presentation. I appreciate your support of our government's proposed legislation. I asked a question earlier of Elizabeth Bodnar of the Group Health Centre, and her response with respect to the doctors' support at the Group Health Centre was also very supportive of this type of legislation moving forward.

You did mention specifically section 71 with respect to the proposed regulatory powers of this bill, and that

those should be narrowed or reduced. Section 72 proposes public consultation before any regulatory changes are made. Do you feel that's adequate to address the concern of regulatory powers within this legislation?

**Dr Best:** No, I don't think that's adequate. I would like to see a more formal process where, again, the representative parties, the OHA and the OMA, would have a more direct input. I'm a little bit suspicious that just a public consultation may leave the door open for consultation and then change taking place regardless.

**Mr Oraziotti:** OK. Thanks for your input.

**The Chair:** Thank you, Dr Best, for your presentation and for taking the time to come and give us your position.

This concludes our group and individual presentations, but first I am going to ask, is there any other business?

**Mr Fonseca:** Yes, Mr Chair. I'd like to ask the standing committee—this is for tomorrow's hearings in Kingston—if the Canadian Blood Services could present for 40 to 60 minutes. They would do that at the end of the session tomorrow.

**The Chair:** I would need unanimous consent on that.

**Ms Martel:** Mr Chair, may I just ask a question? Their presentation would be 40 to 60 minutes long?

**Mr Fonseca:** Yes.

**Ms Martel:** Why would we allow that when we haven't allowed that for any other organization?

**The Chair:** That's why we need unanimous consent.

*Interjection.*

**Ms Martel:** But we've been pretty clear to everyone who has presented that if they are an individual, they get 15 minutes; if they are an organization, they get 20. Those are the rules that everybody else has lived by, and frankly, I think that rule should apply to this organization as well.

1600

**Mr Rinaldi:** I tend to disagree. If anybody else had asked for any exemptions, I think we would have assessed it. Nobody has asked. These folks have asked, and if they have some specific concerns, we certainly have the time. One of the comments was that we had lots of time to spare. While we're on the road—I mean, what I heard here today has made my trip to Sault Ste Marie worthwhile. If any agencies have those concerns—

**Mr Flaherty:** Especially the last one.

**Mr Rinaldi:** All of them, very much so. I think if people out there want to speak to us, that's what we're there for.

**The Chair:** This is why we need unanimous consent, though, because the procedure was 20 minutes per group.

**Ms Wynne:** I don't know what the procedure has been in the past. Has this happened before? Is it something that other groups have asked for in the past? I just don't have enough experience to know.

**The Chair:** It did happen before, yes.

**Ms Wynne:** It has happened before? OK. And groups have been given extra time?

**The Chair:** That is right.



**Ms Wynne:** I was never given extra time, so I wouldn't know.

**Interjection:** Did you ever ask?

**Ms Wynne:** Sure.

**The Chair:** So at the present time, are they scheduled to appear in front of the committee?

**Mr Fonseca:** They are scheduled to appear tomorrow. I believe they are first on our list for tomorrow—is that correct?—and they would move to the last position if we so deemed. That's where we wanted them to present.

**The Chair:** What is the position of the parties?

**Mr Ouellette:** Mr Chair, we've had situations in the past where what groups tried to do was amalgamate presentations so that they could extend their time. There have been attempts in other groups where they've said, "Well, we can't show up, but we'd like this group to present."

The decision at that time said that, no, only one presenter was allowed the set time for groups or individuals. I think once you start breaking from that, it opens the door because, had they known this option was available, other groups would be saying that they would like more time as well. The difficulty is, when you start a precedent that changes through the course of the hearings, other groups may not be supportive and they'll come forward and say, "Well, wait a sec. Why did you do it for them and not for us?"

**The Chair:** As I said, I've seen it happen in the last eight years. What is the position of the group at the present time? Do we stick to the 20 minutes per presentation?

**Mr Fonseca:** Mr Chair, I just heard from the Ministry of Health—I guess they've contacted the Ministry of Health—and they do have some elaborate concerns and issues that they want to discuss about the bill that will take more than the allotted 20 minutes.

**Ms Martel:** I appreciate what you're trying to say, but I think the committee needs to bear something else in mind. This is the fourth draft bill of this legislation. There were three consultation papers done as well. So it's not like there hasn't been ample opportunity for organizations to go around the block with the ministry on this on a number of occasions.

If the group has some specific concerns that they want to raise with the ministry that take them over the 20 minutes, I'm sure the ministry staff, who have been dealing with a number of these groups, would be

prepared to do that. But I really don't think we should be moving down the road where we set by motion what the timetable is, and because one group now has decided they can't say what they have to say in 20 minutes, they're asking for an extension. I suspect there would be other groups—and I see another presenter from a group of faith communities in Toronto who, had they known they could have asked for unanimous consent to extend their time, would have done that.

If this were really controversial legislation and if we hadn't been at this before, I might say yes, but this is the fourth draft bill. I'm finding it hard to imagine what else could come out that hasn't come out in the three previous drafts.

**Mr Fonseca:** I'd like to call the vote on this.

**The Chair:** Take a vote on it?

**Interjection:** There's supposed to be unanimous consent.

**Ms Martel:** You don't have my consent, if that's what you're looking for.

**The Chair:** According to the clerk, we can proceed with a vote. Would you move the motion.

**Mr Fonseca:** I move the motion that we allow the Canadian Blood Services to present for 40 to 60 minutes tomorrow in Kingston.

**The Chair:** That presentation will be done at the end of the hearing?

**Mr Fonseca:** Correct.

**Mr Rinaldi:** I would request a recorded vote.

**The Chair:** We should ask if there are any questions prior to voting. Any questions?

**Mr Rinaldi:** Just a recorded vote.

#### Ayes

Dhillon, Fonseca, Leal, Rinaldi, Van Bommel, Wynne.

#### Nays

Flaherty, Martel, Ouellette.

**The Chair:** The motion is carried.

Thank you very much to all the groups that have taken time to come and make a presentation.

*The committee adjourned at 1606.*

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### **Also taking part / Autres participants et participantes**

Mr David Oraziotti (Sault Ste Marie L)

Ms Carol Appathurai, acting director, health information and sciences branch,  
Ministry of Health and Long-Term Care

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## CONTENTS

Tuesday 3 February 2004

<b>Health Information Protection Act, 2003, Bill 31, <i>Mr Smitherman</i> /</b>	
<b>Loi de 2003 sur la protection des renseignements sur la santé,</b>	
projet de loi 31, <i>M. Smitherman</i> .....	G-131
Algoma Community Care Access Centre.....	G-131
Ms Mary Tasz	
Sault Area Hospital.....	G-134
Mr Manu Malkani	
Ms Johanne Messier-Mann	
Group Health Centre.....	G-137
Ms Elizabeth Bodnar	
Ms Tamara Shewciw	
Children's Aid Society of Algoma.....	G-141
Ms Trina Colizza	
Ms Tracy Willoughby	
Algoma Health Unit .....	G-144
Dr Allan Northan	
Mr Jeff Holmes	
Algoma West Academy of Medicine.....	G-146
Dr Tim Best	

ON  
6  
23



Government  
Publications

G-6

G-6

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## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 4 February 2004

# Journal des débats (Hansard)

Mercredi 4 février 2004

## Standing committee on general government

Health Information  
Protection Act, 2003

## Comité permanent des affaires gouvernementales

Loi de 2003 sur la protection  
des renseignements sur la santé



Chair: Jean-Marc Lalonde  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENT

Wednesday 4 February 2004

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Mercredi 4 février 2004

*The committee met at 1006 in Howard Johnson Confederation Place Hotel, Kingston.*

HEALTH INFORMATION  
PROTECTION ACT, 2003LOI DE 2003 SUR LA PROTECTION  
DES RENSEIGNEMENTS SUR LA SANTÉ

Consideration of Bill 31, An Act to enact and amend various Acts with respect to the protection of health information / Projet de loi 31, Loi édictant et modifiant diverses lois en ce qui a trait à la protection des renseignements sur la santé.

**The Chair (Mr Jean-Marc Lalonde):** Ladies and gentlemen, on behalf of the standing committee on general government, I'd like to welcome you all to our hearing on Bill 31. This morning we have four groups.

KINGSTON GENERAL HOSPITAL  
HOTEL DIEU HOSPITAL

**The Chair:** The first presentation will be from the Kingston General Hospital and the Hotel Dieu Hospital. I would ask the people representing those two hospitals to come up.

Thank you for taking the time to come and explain to us your concerns and comments that you have on Bill 31. You will have 20 minutes, which can be divided. If you're taking the 20 minutes, then there is no time left for question period. If there is time left, it's going to be divided amongst the three parties. Go ahead.

**Mr Neil McEvoy:** Thank you, Mr Chair. We do appreciate the opportunity to speak to you. My names is Neil McEvoy. I'm associate executive director of Hotel Dieu Hospital.

The acute care hospitals in Kingston are actually closely integrated in many ways. Among them is the management of personal health records for our patients, so the submission that we are bringing before you today is in fact a joint submission of Hotel Dieu Hospital and Kingston General Hospital, which as of January also includes the Kingston Regional Cancer Centre.

Behind me I have a number of members of our delegation, representing both hospitals. If my memory will serve me well—I haven't had a chance to make my notes to myself here—behind me we have Fran O'Heare, who is director of risk management at Kingston General

Hospital; Paul McAuley, who is director of information management at Kingston General Hospital; and Karen Hanewich, who is the privacy officer at Kingston General Hospital. My colleague to my right, Karen Humphreys Blake, will perhaps have other introductions later on.

The Kingston hospitals actually have a long history of collaboration and shared services.

Our hospitals have a long tradition of co-operation. We have always sought ways of rationalizing the services in our region for obvious reasons: We would like to avoid duplication, improve efficiency of our services and, in particular, focus the resources that we have on the needs of our patients.

In this process, the health records department has long been a very strong and obvious candidate for this type of integration. In addition to the economies that we can achieve by bringing together the management of two different groups, there are also very significant gains to be had in terms of patient care. Having all of the information for a patient available under one cover really assists greatly in the assessment of that patient and in the delivery of care.

Back in 1996, the Kingston hospitals took the innovative step of establishing a single patient identifier for the patients in this region who are treated in both hospitals. This effectively allowed us to bring together the records for all of these patients within one physical area and under one administration. We have been doing so ever since and we can confidently say that this has been a very positive move in terms of patient care. Our caregivers have appreciated the fact that they have available to them as much as possible of the information that is required for them to deliver care to the patients. It does involve the combination of both hospitals working in unison.

Our submission, therefore, will address the act insofar as it relates to shared medical record departments. I'm sure you have heard many submissions from others regarding some of the details of the act that is proposed. We will try to narrow it down to what we feel may be some expertise that we can offer in this area, since we have been doing this for upwards of seven years now.

We are grateful for the opportunity to appear before you and we want to reiterate that we share the values on which the legislation is based, those being to achieve the optimum balance between the needs of care deliverers in looking after the needs of a patient on the one hand, and on the other hand, preserving and protecting the privacy



of this information as it relates to the individual. We do realize that it is a delicate balance that we are looking for through the legislation.

We feel the framework that has been proposed in this legislation is commendable—it does strive to do this—and we wish to support it as much as we can. We would point out that many of the provisions of the act are in fact reflective of professional activities that have been followed and established by the professions within our organization. To bring these together under a single framework is certainly something we wish to do, but we are simply reinforcing many of the practices that have already been in place throughout our hospitals.

However, in integrating the personal health records across institutions, we think that we may be able to offer you some insights into some of the challenges that we may face, and we would suggest with respect that by looking at how this act might apply to an existing shared service in Kingston across the two hospitals, your committee may be able to determine how well this act or this legislation will in fact promote the integration of hospital services across the province. You are no doubt aware that hospitals are encouraged to integrate, to come together, to avoid duplication, not just in one city but across regions. We feel that this will be a trend over the next five to 10 years. The act, therefore, should not impede that. It should support it as much as possible without in any way impairing the rights of the individual. I hope that our comments and our suggestions will be along those lines.

We have three areas to suggest where improvement to the legislation could be contemplated.

First is that the role of physicians as agents or as custodians may need to be clarified. The setting in which health care is delivered in a hospital is really built around a team. Whether that team is delivering care concurrently or continuously, the access by more than one person to patient information really is vital to good patient care to the people who come into our hospitals.

A custodian under the proposed legislation may delegate to an agent the rights and accountabilities for collection, use and disclosure of information as they extend to the custodian herself. This means that a physician who is working as an agent will have access to the complete record of a patient that is available in the hospital. However, if the physician as a care provider is defined as a custodian, then those portions of the act that relate to the communication between custodians may limit the ability of the physician in any one hospital to have access to the complete record of a patient being seen in that hospital.

In a setting such as Kingston, where we have two hospitals in operation sharing a single record, this becomes a more complex relationship. So, for a physician operating in one hospital, we must consider whether that physician is an agent or a custodian with respect to the other hospital, where the other hospital has the custody of the physical record. I'll return to this with our third recommendation, but we do feel that the legislation itself

would benefit from a clarification of the role of physicians and other independent caregivers with respect to the act.

Our second recommendation is that the legislation prescribe discrete portions of the health record for which consent may be withheld. The act appropriately recognizes the right of the individual to have certain portions of her health information withheld from distribution and disclosure. However, the implementation of this at a practical level will have consequence for hospitals. We have policies and procedures in place for the employees who handle records. These are agents of the custodian within the meaning of the act. The act does not specify the granularity at which consent may be given or withheld. In the absence of some specification, we would need to establish fairly detailed procedures that could extend from whole sections of a chart down to individual pages. This would require documentation built in to our procedures so that the agents of the custodian would comply with the act and make sure that only those portions of the health record are withheld from disclosure to other custodians.

As you can imagine, this will entail the commitment of certain resources and will add complexity to the administration of the act. Our recommendation, therefore, is that the act or its regulations specify which discrete portions of the chart, of the patient record, may be identified and for which consent may be withheld. We are not suggesting that there be any portions of the chart for which consent would not apply, but simply that it be broken up into fairly discrete sections so that the administration of the act will be more realistically achievable.

Our third recommendation drives straight to the essence of shared services. We are proposing that the act or its regulations elaborate on the respective obligations and accountabilities of the many custodians who may act as one, as provided for in subsection 3(7). In those definitions of a custodian, it provides for the case where two or more custodians may apply to act as one custodian. This provision would apply, for instance, to our hospitals, where we share the collection, use and disclosure of patients' personal health information.

However, the success of this sharing rests very much on mutual trust and collaboration between custodians and between institutions. The act, as written, provides little guidance on how the respective obligations, accountabilities and delegations should be distributed. We feel this is important. The act itself does provide for a form as specified by the minister, but if we are to support the sharing of patient records among institutions, we feel that it would benefit from much greater thought as to how the responsibilities would be shared among the custodians.

As I mentioned under the first recommendation, when we have health care providers—physicians, for instance—operating in one institution with access to and the ability to disclose information that is under the custody of another institution, we must make sure that we understand which custodian is really responsible for any infractions of the act. It would be unfair to have one



institution, one custodian, with no authority over another custodian, subject to the requirements of the act or to the punitive measures of the act should there be an infraction. We feel that it would benefit the community at large if this portion of the act could be elaborated and further thought given to how the responsibilities and accountabilities would be shared.

Members of the committee, we thank you for the opportunity to bring before you these suggestions and these observations. As providers of health care, we are committed to the values and principles that you are. Also, as providers of health care, we rely on the generosity of our community. As partners in health care in this community, we would also like to address with you our concerns in the area of fundraising. With your permission, I wish to defer to my colleague Karen Humphreys Blake.

1020

**Ms Karen Humphreys Blake:** Good morning. My name is Karen Humphreys Blake. I am vice-president, public affairs and development for Kingston General Hospital and secretary to the board of directors of the Kingston General Hospital Foundation.

I note that Kingston General Hospital has recently joined with its partners in the provision of health care—Hotel Dieu Hospital, Kingston Regional Cancer Centre and Providence Continuing Care Centre—to establish a joint approach to fundraising in this academic health sciences centre. We have recognized the need to raise funds at a much higher level if we are to continue providing care to the more than 500,000 people in southeastern Ontario.

Thank you very much for allowing me the opportunity to address the committee as it relates to the fundraising component of the Ontario health privacy legislation.

With me today is Lee Macnamara, who is president of the KGH foundation, as well as other colleagues from KGH and Hotel Dieu.

Let me begin by saying that we are supportive of the introduction of this legislation that will protect the privacy of all Ontarians in matters that relate to health. We do, however, have a concern regarding the requirement for express consent to ask patients for their support. Many of these patients are very grateful and do want to provide their support.

At the Kingston General Hospital Foundation we have long practised privacy protection as outlined by the Association for Healthcare Philanthropy, the Canadian Centre for Philanthropy and the Canadian Association of Gift Planners.

Kingston General Hospital, as a tertiary care teaching hospital, must be available when local community hospitals need help dealing with complex, specialized patient needs. This means we must provide care above and beyond what our partner hospitals throughout the region can deliver. This means significantly larger capital commitments in equipment and technology to treat patients and educate future health care providers. We here in Kingston care for the most sick and injured patients from across southeastern Ontario.

We believe ethical and moral issues abound when considering asking patients at any time during their admission, or stay, to sign an express consent that allows the hospital to solicit financial contributions. Patients are not in a position to make a fair and informed decision when they may be in their weakest or most vulnerable state. Imagine yourself being brought to Kingston General Hospital by ambulance from Brockville, Cobourg or Bancroft and being asked if we can solicit you for fundraising—the farthest thing from your mind, I'm sure, and it should be.

Almost 50% of admissions to KGH are through the emergency department and, on average, 50% of patients in hospital at any time could be from outside Kingston, thereby creating additional challenges when we're seeking local support for services.

Caregivers often work in states of constant high stress and must be able to focus their efforts on their direct care duties and not be expected to become fundraisers as a regular part of their job.

There is no central discharge process, as people have varying outcomes that affect their method of release. Therefore, the discharge process does not provide a reasonable point for acquiring express consent for fundraising.

The express consent being proposed in Bill 31 is in conflict with what research in other centres has shown to be the public's view. People do not want to be confronted with express consent when their mind is on their health issues. In studies done on express consent at Mount Sinai Hospital in Toronto in 2001, 75 patient complaints were received in the first 90 days of the study compared to an average among hospitals of one to two complaints for every 10,000 to 20,000 mailings on fundraising.

Current practices at Kingston General Hospital include a grateful patient mail program with 20,000 to 30,000 letters sent out annually. Letters are sent out by the hospital asking for support through the hospital foundation. Foundation and development office staff have no direct access to patient information. It is only when patients become donors that further requests are made by the KGH foundation.

KGH follows the suggested grateful patient program guidelines as outlined by the Association for Healthcare Philanthropy. All letters from the hospital and the foundation include an opt-out clause that will prevent future mailings at the patient's request.

The current practice allows us to carefully filter out those patients who would not be appropriate to ask based on the treatment provided or the outcome of their health situation. Express consent does not necessarily offer the same level of screening. We receive very few complaints, fewer than five per year.

While the amount of revenue derived from our grateful patient mailers is a small percentage of our overall revenue—about \$20,000 to \$30,000 per year out of a total of \$1.8 million—it is often these donors who in later years become loyal, committed supporters as a result of being well served by their hospital.



I wish to point out that those people who start out by making small annual contributions as grateful patients are often the same generous people who make a thoughtful decision to leave KGH, and likely their own community hospital, in their estate plans. This adds up to millions and millions of dollars over the years.

These are the donors who provide the base for our future philanthropic success. Once an individual or their family member is touched by the health care system, they gain an appreciation for the quality of care that is provided when they need it most.

Kingston General Hospital is facing capital equipment requirements of over \$30 million, infrastructure needs of another \$30 million, and houses a research centre that is only in its early growth stage. Our health care partners also have significant short-term capital needs. This does not include restructuring costs that will be in the range of \$60 to \$70 million or more as we move forward. We desperately need every dollar that is available from residents across southeastern Ontario.

As I noted earlier, KGH is currently engaged in a joint initiative with its health care partners, Hotel Dieu Hospital, Kingston Regional Cancer Centre and Providence Continuing Care Centre in Kingston to build the infrastructure to take fundraising efforts to much higher levels in an effort to respond to the tremendous demands on our system.

In a world of increased financial accountability, transparency and efficiency, the proposed legislation will shift the focus from increased patient care through philanthropy to endless explanations as to why we have invest significant resources to put the "ask before the ask."

Bill 31 imposes much stricter limitations on hospitals and health care providers than charitable organizations in other sectors such as universities and the arts. If hospitals are going to be unfairly disadvantaged from seeking support from their grateful patients, my question to you is, where is the funding to come from to replace lost revenue? What plan is in place to offset this negative impact?

I was most pleased to read in the federal throne speech that strengthening the good work of the voluntary sector and supporting philanthropy has been highlighted as important for the federal government. I can only assume that strengthening this sector is also important for the Ontario government.

In conclusion, we ask that you seriously consider a revision to the proposed legislation that will allow an opt-out option for fundraising purposes rather than express consent for hospitals.

Thank you for the opportunity to share our views with you today.

**The Chair:** Thank you. We have one minute left. Last night we finished with the opposition, so it is the NDP's turn.

**Ms Shelley Martel (Nickel Belt):** I appreciate your points on fundraising; I think you're right on. We're going to need an amendment to this; we really are. The

point I wanted to go back to has to do with the lockbox provisions. On page 2 you talked about the act specifying that consent may be withheld in respect of certain "discrete portions of the health record." Can you give the committee an example of what you mean by that?

**Mr McEvoy:** The areas that in our experience tend to be most sensitive are areas of the health record that may relate either to mental health issues or to infection issues. In both of those instances there may be portions of the chart, such as the records of an interview or the findings of an assessment, with which the individual may have some difficulty. Our concern is that if one page were to be removed or to be identified as having consent withdrawn from a much larger package of let's say a mental health assessment, searching for that page might be difficult. We would recommend instead that if there are issues within the mental health component or the infection component of the chart, that would be a quantum to identify for removal or for withdrawal of consent. When we talk of discrete components, we are talking of fairly well identified portions of the chart that could be identified in our policies and procedures so that if someone were to withdraw consent for one portion of that, that section be identified.

1030

**The Chair:** Thank you. The government side.

**Mr Peter Fonseca (Mississauga East):** This question will be around the fundraising. You did bring up that it is a very small percentage of your overall fundraising, the \$20,000 to \$30,000 that you get from direct asking of patients. Does that increase, with time, by much? How much of the \$1.8 million, your overall fundraising total, comes from corporate donations or other donations?

**Ms Humphreys Blake:** I guess I did explain that it does increase over time. What we find is that once a donor becomes a donor, they might start with a small donation and then year after year the donation grows. It may be that they start with a \$50 donation, and then it might go up to \$500 or \$1,000. Those people are also the ones who are very likely to include us in a bequest as they plan in terms of their estate. So it is significant. It's hard to measure. We'd have to track a number of them and we haven't had the ability to do that.

**Mr Fonseca:** I guess we'd like that tracking to know. It looks like it's making up about 1%—

**The Chair:** Time is up. Sorry. We're going to go the official opposition side.

**Mr Jerry J. Ouellette (Oshawa):** Thank you for your presentation. Just to expand—I know we don't have much time: You specifically stated, when you were talking about the physicians and the agents and the custodians, that there should be other caregivers who should be defined in there as well. Could you let us know which other ones you might be referring to?

**Mr McEvoy:** The act should apply to other practitioners such as nurse practitioners or other people who may have privileges, midwives who have privileges in a hospital; our language was intended to be inclusive of anyone who might be identified under subparagraph i of paragraph 3 of subsection 3(1).



**The Chair:** Thank you very much for your presentation today and also about your concerns.

#### HIV AND AIDS LEGAL CLINIC ONTARIO

**The Chair:** The next group is the HIV and AIDS Legal Clinic Ontario. Thank you for taking the time to come over and giving us your concerns. If we could have your name and position, please.

**Ms Ruth Carey:** Good morning. My name is Ruth Carey. I'm the executive director of the HIV and AIDS Legal Clinic Ontario. I'm a lawyer. I was called to the bar of Ontario in 1993. The legal clinic is a community legal aid clinic pursuant to the Legal Aid Services Act. We're primarily funded by Legal Aid Ontario. We're also funded in part by the Ministry of Health and Long-Term Care through the AIDS Bureau program.

I don't think it should come as a big surprise that the constituents I serve, the people living with HIV, in this province are concerned about the legislation. We have actually been involved quite actively in privacy consultations since 1997. I think this is probably the tenth government consultation I've been involved in. In my personal capacity, I'm also a member of the Ontario Advisory Committee on HIV/AIDS, which advises the Minister of Health and Long-Term Care on HIV legal issues and other kinds of HIV issues.

Some people may not know this, but just to make it clear, the reason that HIV-positive patients are so concerned about privacy issues and about this legislation is because HIV-positive patients are the ones who lose badly when their HIV-positive status is disclosed without their consent. My office handles between 200 and 250 calls every month from the HIV population in this province about things exactly like this. People get evicted from their buildings because their landlords find out they're positive. People get shunned by their families when their families find out they're positive. They get dropped by their friends. They lose their jobs. For a lot of these things, there are no legal remedies.

HIV-positive people are also the subject of the law. There are specific laws and procedures that make them an object of the law that make them feel even more stigmatized than they are by their communities. So, as a patient population, the HIV population in this province is probably more concerned about this legislation than any other population you can speak to.

On the other hand, HIV-positive patients are also frequent users of health care and, as a result, have a vested interest in ensuring that the health care system is there for them and that it works efficiently. So we see both sides of this kind of debate.

I'd like to focus, in actual fact, on four specific things in the legislation. I could probably talk for several days about this, but just to keep it down, the four specific things I'd like to talk about are the scope of the legislation, the permitted disclosures without consent, access to one's own records and the remedies that the legislation provides for a breach.

In terms of the scope of the legislation, from the patient's perspective, whether it's a hospital that has your health information or your employer, and whether or not that information gets disclosed without your consent, it doesn't really matter. From the patient's perspective, the harm is the disclosure to the person. So from the patient's perspective, hiving off the health industry in separate legislation is not a practical thing to do. From the patient's perspective, it would be better if Ontario's legislation covered the entire private sector.

At one point, one of the Conservative proposals on the table that we responded to was that there be broad, overreaching, single-framework legislation where there would be schedules for each sector, including the health care sector. To us, that was more patient-oriented; it made more sense. One of the things that's going to happen to patients if Bill 31 is passed is that they're going to be really confused about their rights and remedies in different sectors. If you're not covered by Bill 31, are you covered by PIPEDA? The ministry has assured me on more than one occasion that they seek exemption from PIPEDA. They seek to have Bill 31 declared as being substantially similar. Our position, quite frankly, is that it cannot be declared to be substantially similar because it only applies to the health care sector. PIPEDA applies to the broader private sector and it covers information other than health information. We simply are not in agreement with the ministry that they will obtain that exemption. So from the patient's perspective, this scope problem is problematic.

I would also point out that you have this wonderful purpose clause in Bill 31, which I completely agree with. The problem with it is that because Bill 31 is only about the health care sector, the purpose, as stated in section 1, will not be achieved, because health care information is in the hands of insurance companies, it's in the hands of employers, it's all over the place. So the purpose clause in fact will be defeated by the narrow scope of this legislation.

I'd like to talk now about disclosures without consent. You'll note I talk fast. I'm sorry, but I want to get my 20 minutes of fame in. I'd like to start with clause 37(1)(c). Clause 37(1)(c) permits the disclosure of personal health information for the purpose of contacting a relative or friend of a patient if the patient is unable to consent personally. I assume that this clause is intended to ensure that a custodian is able to try to find a substitute decision-maker when an individual is unable to consent to medical procedures on their own. If that's the purpose of the clause, great. I have no complaint with that whatsoever. But that in fact is not what the clause says. It says the custodian can call up any relative or friend for any reason whatsoever just for the purpose of contacting the relative or friend. There seems to be something missing. I would suggest a rewording of clause 37(1)(c) to read something like "for the purpose of locating a substitute decision-maker by contacting a relative."

There are a number of limited lockbox provisions in Bill 31, starting with clause 37(1)(a). It's not a true



lockbox, it's a modified one. From the perspective of people living with HIV, the idea of a modified lockbox is actually a good thing. It's very common for physicians treating people with HIV to have to refer them to other care providers for other kinds of care. It's very common for minor surgical procedures like hernia repair, stripping of varicose veins, the setting of broken limbs. In that context, one's HIV status is actually totally irrelevant. From the perspective of the person with HIV, it would be nice to have the option of being able to be referred to another physician for one of those procedures without having to go through the fear and the worry of being rejected by the new care team when your status is disclosed.

Don't get me wrong; that happens every day. I can tell you dozens and dozens of stories of nurses refusing to care for patients in their hospital who are HIV positive; of physicians being taken aback by the fact that they've suddenly found they're faced with an HIV-positive patient and saying, "Oh, I need to reschedule you so I can put in different procedures," as if they were some sort of Typhoid Mary for whom different procedures have to be put in place. It happens every day in this province. It's just because of the stigma that's attached to the disease. Over time, that stigma is decreasing, hopefully, but nonetheless it does exist. From the perspective of the patient who has experienced this personally, having the option of the partial lockbox is a good thing.

1040

That being said, every time this legislation refers to a partial lockbox, it also says that if the custodian is concerned about this partial lockbox and feels that the receiving physician or the receiving custodian should have that information for the purposes of quality of care, they can warn the recipient of the information that there's something missing from this health record. That's a bit problematic. What happens in those kinds of circumstances is that the recipient of the record has no idea what has been locked away, starts imagining all sorts of things and becomes concerned.

This scenario of something being locked away actually occurs in practice in this province in the context of police record checks. It's very common for the police to actually record people's HIV status and put it in the police computer called CPIC. It happens every day. When you ask for a police record check from the police station, there's a box on most of the forms that says "other concerns." The purpose of the police check is to ensure that the person who is seeking employment or a position as a volunteer does not in fact have a criminal record and in particular a criminal record associated with children or sexual offences. So you will see these police records for people who have no history of offences whatsoever where that little box is checked. Volunteer agencies and employers who receive those checked boxes want to know what the box is checked for, and they will not place people unless they find out. I know from experience that this withholding but telling that there's something you're withholding is deeply problematic. In

practice, it forces disclosure of the very thing you want to keep hidden in order to access the service you're trying to access.

Let's go on to subsection 37(3). Subsection 37(3) is about what I call registry data. It's where somebody calls up the hospital and says, "Is my mom in your hospital?" and they're told, "Yes, she's in room blah, blah, blah, and she's in such and such a condition." That goes on every day in hospitals in Ontario. This section would give patients the right to opt out. The idea is that you can tell the hospital you don't want the hospital to give out this information. In actual fact, we would prefer the opposite: the presumption that the information would not be given out without your consent. The simple truth of the matter is that every patient who gets admitted into hospital goes through an admittance procedure and can answer a very simple question about whether or not they want registry data released. The reason this is important is that with increasing specialization of hospitals, we have identifiable areas in hospitals for HIV-positive patients. We have identifiable psychiatric facilities. So as soon as somebody calls up and says, "Oh, yes, they're on ward B of St Mike's," poof, that person is known to the general public who enquires as being HIV positive. Given the harm that happens to people when that occurs, we think it's reasonable that hospitals should have to pose the question upon admittance; so not an opt-out but an assumption that it won't be disclosed without consent.

Subsection 38(2) is a specific reference to the Health Protection and Promotion Act. It says:

"(2) A health information custodian may disclose personal health information about an individual,

"(a) to the chief medical officer of health ... within the meaning of the Health Protection and Promotion Act if the disclosure is made for a purpose of that act."

In actual fact, the purpose clause in the HPPA, a piece of legislation I deal with every day, is very broad. It says, "The purpose of this act is to provide for the organization and delivery of ... health programs and services, the prevention of the spread of disease and the promotion and protection of the health of the people of Ontario." Anything meets that definition. Anything could be for "the promotion and protection of the health of the people of Ontario." It seems to me that the purpose of clause 38(2)(a) is in actual fact simply to affirm that the Health Protection and Promotion Act, which does have mandatory disclosure clauses in it, is part of an integrated privacy protection legislation. I assume that's the case.

That's not what is happening here. What is happening here is a huge broadening of an ability for a custodian to call up public health and release whatever information they feel, for whatever reason, is in the interests of the public. At the moment, there are very clear mandatory disclosure sections in the HPPA that the health profession is very familiar with. If you want to re-examine the HPPA, personally I think that's a really good idea; that legislation is old. But this is not the way to rewrite the HPPA.

What I would suggest is simply to change the language if the disclosure is made pursuant to that act



rather than for the purpose of the act, because the purpose is really broad.

The big clause for the purposes of the HIV community is actually subsection 39(1). This is what I call the Smith v Jones clause. I'm not sure if you're aware of this. There's a Supreme Court of Canada case called Smith v Jones which was about a psychiatrist releasing solicitor-client-privileged information. The court examined the question of when that was appropriate to be done, when there was a danger or risk. The language the court came up with is not quite the language here. There are a lot of people in the HIV community who would actually say subsection 39(1) shouldn't be there at all, who simply disagree with the principle. There are a lot of people who don't agree with that. It seems to me that this is an effort to mirror Smith v Jones. We have lived comfortably with Smith v Jones for a number of years, so it's OK from my perspective. But I really think you should use the language of Smith v Jones. It already exists; it's already accepted.

What Smith v Jones said was that three factors should be taken into consideration in determining whether public safety outweighs confidentiality.

Basically, is there a clear risk to an identifiable person or groups? One of the things you are missing here is the word "identifiable," a clearly identifiable person or groups. We're not talking about some vague, nebulous, unknown body that may be at risk; we're talking about a clear risk to an identifiable person or body of persons.

Specificity: Is there a risk of serious bodily harm or death? Clearly, the language has been copied.

The third criterion in Smith v Jones is, is the danger imminent? By "imminent" is meant, is there a sense of urgency? Is the danger about to be realized in the near future? There's no reference to the idea of imminence at all in this legislation.

The other thing Smith v Jones said was that if you're going to release what is clearly confidential information as a result of this grave risk of serious bodily harm concern, you should do it in a manner that least impacts upon the privacy rights of the individual about whom you're releasing the information. It seems to me that that makes sense, and that could easily be added into subsection 39(1).

How much time have we got?

**The Chair:** You have two minutes left.

**Ms Carey:** OK. Subsection 39(2), as far as I can tell, allows wide-open disclosures to penal institutions. In the context of HIV, that is actually kind of a disaster. There are a lot of people living with HIV who in fact go in and out of the prison system on a regular basis, the reason being because they're involved with illegal drugs; that's how they became infected with HIV. So the population that's HIV-positive in prisons is actually very high.

If you've ever been in a prison, then you know there is no privacy in a prison. If one person knows something in a prison, everybody knows something in a prison. There is no way to keep a secret. If you tell a nurse in a prison somebody is HIV positive, then you essentially tell all

the guards and all the other prisoners. As a result, I know prisoners who simply do not seek medication when they go into prison because they do not want their status to be known. They do not want to deal with the stigma and discrimination from other prisoners and from guards that they experience when their status is known. Subsection 39(2) takes away that choice from them.

Let me skip quickly to the access section. As you know, here in Ontario we currently are governed by the common law set out by the Supreme Court of Canada in McInerney and MacDonald. McInerney and MacDonald has worked well for me for years in accessing patient records. This section 49 is not in fact quite what McInerney and MacDonald had in mind.

For example, the section that is particularly of concern is clause 50(1)(e), where the custodian is given the right to deny granting the access if the access could reasonably be expected to result in a risk of serious harm to the treatment or recovery of the individual, so on and so forth. In actual fact, the language in McInerney and MacDonald is not whether it could reasonably be expected but rather, was there a significant likelihood? So it's a higher test in McInerney and MacDonald. You're basically giving custodians more rights to withhold records from patients than they currently have.

#### 1050

The other problem about this is, I see that the government proposes to repeal section 36 of the Mental Health Act. From our point of view, section 36 of the Mental Health Act is the model we should be copying in this legislation, not getting rid of. Section 36 basically reflects MacInerney and MacDonald. It puts the onus on the custodian to establish why they're denying access to the records. Under section 36 of the Mental Health Act, if a psychiatrist or an institution wishes to deny access to the records, they must make an application to the board to justify doing so. This legislation proposes to take that protection away from patients.

**The Chair:** You have two minutes left.

**Ms Carey:** Great. So let me talk about remedies very briefly.

Section 55, if you turn to it, and subsection 55(3) in particular, basically gives absolute discretion to the commissioner to review a complaint or not. So if the commissioner decides not to review your complaint, you have no right to complain. The legislation contains no appeal rights. Most administrative tribunals that have the discretion not to hear a complaint also have a section that says that you have the right to request a review of that decision. There's no such section in here. There's nothing in here about appeal rights to the court, for example. In other words, the commissioner has the absolute discretion to simply do away with complaints. If you have any experience with the record of the Ontario Human Rights Commission, which does away with 99% of all complaints to it without a hearing, then you will recognize that this is a very dangerous thing to allow.

Subsection 55(4) has an entire list of screening procedures. This is also something that is not substantially



similar to PIPEDA. In fact, the federal commissioner doesn't have this ability to screen out complaints and get rid of them without dealing with them without an investigation.

Similarly, in subsection 60(5), if the commissioner decides to not issue an order after a review of your complaint—there's no appeal, there's no right of review—that's unusual for administrative procedures. We would recommend that that kind of thing be put in.

Subsection 63(1), the damages section: This is actually a very good thing. It mirrors PIPEDA to a certain extent. PIPEDA also allows a patient to apply to the court for a damages claim if a breach is found.

Unfortunately, the legislation here refers to "damages for actual harm." This is different from the provincial privacy acts in several of the provinces—BC, Manitoba and Newfoundland come to mind—which specifically say that you apply to a court for damages for breach without proof of actual harm, and there's a reason for this. The idea is that privacy at international law is a human right. The "breach of a human right" should protect the dignitary interest; you shouldn't have to establish actual harm because the public interest is being protected by the remedy for damages.

I'm running out of time; I'm getting the eye.

**The Chair:** Your time has expired right now. If you have any additional information that you'd like the committee to look over, you could have it sent to the secretary of the standing committee on general government. Tonia could give you the address of where to send it, but I think you already have it. Thank you very much for your presentation.

We haven't got any time for questions.

**Mrs Maria Van Bommel (Lambton-Kent-Middlesex):** Can we propose a motion to extend the time?

*Interjection.*

**Mr Brownell:** I know we're rookies over here.

**The Chair:** We would require unanimous consent at the present time. The motion was brought about yesterday by the member representing the minister and it would have been for the next presenters. So I'm sorry, unless we have unanimous consent.

**Ms Martel:** Mr Chair, I don't want you to take this personally, but I'm going to be consistent with what I did yesterday. When the committee first set up its rules, there was a decision made with respect to individual presentations of 15 minutes and groups with respect to 20.

I hope you will send us the rest of your comments because I certainly appreciated what you had to say. I think we've heard many of the suggestions that you made from groups before, particularly representing mental health constituents, and we need to take a look at that. The concerns have been similar in some cases. But I'm going to have to decline consent because I think we have set a rule and we should keep to it.

**Ms Carey:** Thank you very much.

**The Chair:** The next group is the Canadian Blood Services. Are they here yet? I don't believe so. We'll take a five-minute recess.

*The committee recessed from 1055 to 1104.*

## CANADIAN BLOOD SERVICES

**The Chair:** Thank you very much for taking the time to come over and make a presentation to the standing committee on general government. As was agreed yesterday by a motion in Sault Ste Marie, your group will be allowed up to a maximum of one hour for the presentation. If you're taking the whole hour, there won't be any time for a question period, so we'll leave that up to you. You can go ahead. Thank you again for taking the time.

**Mr Watson Gale:** Thank you for having us.

**The Chair:** Can we have your name and position, please?

**Mr Gale:** My name is Watson Gale, vice-president, general counsel and corporate secretary of Canadian Blood Services. On my left is Mr Darren Praznik, the executive director of government relations for Canadian Blood Services, and on my right is Ms Elaine Ashfield, legal counsel with Canadian Blood Services.

Monsieur le Président and members of the committee, thank you very much for having us here today. We very much appreciate the opportunity to speak with you about this matter today.

As I mentioned, my name is Watson Gale, and I am the vice-president and general counsel of Canadian Blood Services. We're obviously here today to speak to you about the application of Bill 31 on the operations of Canadian Blood Services, or CBS, as we like to call ourselves. We are, as you probably all know as well, the national integrated blood operator for Canada, across this country and all provinces and territories, with the exception of the province of Quebec.

I'd like to acknowledge that we've already been in contact with the minister's office with respect to our specific concerns. We are most pleased that the minister's staff arranged for us to meet with them and the department and legal officials who have been working on the wording of this bill, and that we are currently working with them to resolve a number of the issues.

As recently as yesterday we have been discussing some of these matters with them, and I think it is important to note that we at CBS are more concerned about the results of any of these discussions and the application of the bill to us rather than the process or the method by which these results are obtained. I will address that with a little more specificity of it later.

I think it is important also to state that there is a recognition and willingness on the part of the minister's office that these issues do need to be addressed and that the question is, what is the best method of doing that?

In fairness to both the minister and his legislative drafters, Canadian Blood Services is a very unique part of the health care system, and as a consequence, we could not expect that our unique circumstance could be entirely contemplated in the drafting of a complex piece of legislation such as this bill. As such, we are pleased to

have the very speedy and supportive response from the minister's office when we contacted them several weeks ago with our concerns and specific issues.

I would also like to stress at the outset that CBS firmly believes in the importance of safeguarding and protecting the personal health information of our citizens. We understand how important it is to do this. In fact, protecting the privacy of the personal health information of our donors is essential to the operations of a blood system. It is important that our donors, when they make an initial donation and when they continue to make donations in the future, understand that the information they provide to us is kept with the utmost of privacy. For CBS, the protection of the privacy of our donors is essential to the operation of the system.

We would like to tell you a little bit about Canadian Blood Services and what we do. We have found in discussing with the public across this country that very often what we actually do in CBS is not really very well understood. I'm sure it will demonstrate our uniqueness in the health care world and emphasize the issues that we do wish to raise with respect to the effect of certain provisions of Bill 31 as they are currently drafted.

As I mentioned previously, CBS is a unique provider of a health care service in Canada today. We are the only provincially owned and funded provider of health care services that operates on a national integrated basis. As you may know, we do not operate in Quebec; that is in fact operated by an organization known as Héma-Québec. Other than that, we provide all blood supply matters for this country from coast to coast to coast.

Although we are an arm's-length charitable corporation, provincial and territorial governments appoint our board of directors, approve our three-year corporate plan and provide our annual budget. Our operations are regulated by the federal government through Health Canada.

This arrangement was established in 1998 by these 12 provincial and territorial governments, with the support of the federal government, in the wake of the tainted blood scandal of the late 1980s and on the recommendation of the royal commission into the blood system in Canada conducted by Mr Justice Horace Krever. Coincidentally, Mr Justice Krever conducted the commission of inquiry into the health information privacy in Ontario in the early 1980s.

In creating CBS, the Ministers of Health of the day provided it with a mandate to be responsible for a national blood supply system which assures access to a safe, secure and affordable supply of blood, blood products and their alternatives. In addition, CBS was given responsibility for recruiting and managing donors, whole blood and plasma collection, processing, testing and laboratory work, storage and distribution, and inventory management across the country.

1110

The ministers also gave CBS the responsibility of developing and maintaining a surveillance and monitoring system capable of identifying potential threats to the

safety of the blood supply and to take timely and corrective measures. As such, CBS has been mandated by its provincial and territorial owners, including Ontario, to operate a nationally integrated blood system.

So, how does the system work?

Let me first tell you a little about what we do as a blood operator so you'll have an appreciation of the interaction of this legislation with our processes.

By the end of this current fiscal year, we will collect from Canadians in our jurisdictions approximately 850,000 units of whole blood. From this, we anticipate that we will ship to over 800 hospitals in Canada approximately 745,000 units of red blood cells, 400,000 units of platelets, 160,000 units of plasma and 65,000 units of cryoprecipitate and cryosupernatant. These 850,000 units will come from approximately 450,000 active individual donors who on average will donate approximately twice per year. Some of these donors will of course be deferred either temporarily or permanently due to various risk factors, or for whatever reason will not continue to make a regular donation. In fact, we need to recruit approximately 80,000 new donors annually to be able to meet the increasing demands in Canada today. As I am sure you can appreciate, it is a constant effort to maintain this significant pool of donors on which the national blood supply depends.

With respect to Ontario specifically, you may wish to note that of the total CBS production, Ontario hospitals will use approximately 50% of red blood cells, 52% of platelets, 70% of plasma and just over 50% of the cryo products. However, in terms of donations, Ontario generally does not meet its own needs and is a net importer of blood and blood products within the national system. This is demonstrably why a national system is so important to this province.

CBS's work in maintaining and managing these donations from collection to delivery to the hospital door is far more complex than may appear to the general public. Each step, which is regulated by Health Canada, is designed to minimize risk to the health of the eventual recipient of the blood product.

In addition to the tremendous efforts that are required to recruit donors in the first place, the donation process requires that donors answer a long list of questions. We have included in the package of materials that we have provided to you a copy of the Record of Donation. As you can see, a donor is required to answer many questions, including several which involve the most personal of health information. These are mandated by Health Canada and are designed to minimize risk. We are also unable to make changes to this Record of Donation without approval by the regulator. Given the personal nature of the information requested from a prospective donor, it is fundamentally important that we protect the privacy of the donor, and of course we currently do so.

I would also point out that we are required by a Health Canada guideline to maintain this information in our database even if the prospective donor is deferred or chooses not to make a donation. Again, this information



is kept should the person return to make a donation, either in the same or a different jurisdiction. It can assist our medical directors, who may choose to exercise their discretion and defer a donor for a variety of reasons.

Should the donor be cleared to donate, we then take the donation. If any of you have given blood before, you will have noticed that in addition to the blood bag in which the donation is collected, there are also a certain number of vials that are collected at the same time. In order to maintain a closed system and so protect the blood from contamination, it is these vials and samples that proceed for testing while the blood bag itself proceeds to a different lab for processing and manufacturing into the various products we produce. Both of these processes go on simultaneously, sometimes in very different and distant physical locations. For example, all blood testing takes place in one of our three major consolidated regional labs in Halifax, Toronto or Calgary. The manufacturing process, on the other hand, usually takes place in a lab located in the province where the donation was made.

You may wish to note that we can manufacture up to four components from a unit of blood and so benefit four recipients from a single donation.

If any of the tests we conduct produce a positive result, then the sample is sent to the national testing lab in Ottawa for confirmatory testing. In these cases, the donor will be notified by one of our medical directors, who are all licensed physicians across the country. The product, of course, will be recalled or destroyed. If all of the tests are negative, then the test results will be matched with the now manufactured products, which can then be cleared for release into the CBS inventory for shipment to hospitals across Canada where the need may arise.

Although Justice Krever had recommended a vein-to-vein system, this has not been achieved by CBS, and it has not been achieved based on the mandate given to CBS, as we manufacture vein-to-hospital door only. Hospitals that receive product are required to maintain records for the product and transfusions which can be matched to CBS's network through the product unit number if required. Thus, a donation of blood made to CBS anywhere in Canada can be traced to the recipient or recipients and back again if this becomes necessary.

We would also point out that part of our responsibility is to be able to contact a donor should there be an adverse transfusion reaction or a subsequent condition in the recipient that would suggest the donor undergo testing for a possible health condition. This testing is used not only to investigate the source of the adverse condition in the recipient, but also to confirm for the donor that they themselves may have a possible health issue.

I think it is important also to note at this point in time that our donors come to us voluntarily. They do not come to us for any form of therapeutic treatment. They come to make a voluntary donation for the benefit of others who need therapeutic treatment.

With the implementation of the MAK Progesa donor information system over the last year, this system being a

brand new, nationally integrated information system, a huge financial contribution has been made by the provinces and territories to implement this. With it, CBS is now able to manage the information flow in this entire process on a nationally integrated basis. This means that a donation collected in Moncton, New Brunswick, manufactured in Saint John, tested in the CBS labs in Halifax and Toronto—the latter being where our West Nile virus lab is—with components utilized in Prince Edward Island, Ontario and British Columbia, can be continuously and instantly tracked by the appropriately authorized CBS official if required. It is this degree of integration in having a truly national blood system, including a national information system, that provides Canadians with the greatest assurance not only of the security of supply, but also of the safest possible blood supply.

You may have noticed already that CBS's operations involve a multitude of integrated facilities and activities across the provinces and territories. These include 14 blood centres, two dedicated plasma collection centres, three regional testing sites, approximately 42 permanent collection sites, a national headquarters, a national testing site, a national donor contact centre, and, annually, approximately 14,000 mobile collection clinics. Consequently, the application of privacy legislation in any given province to a nationally integrated blood operator can be complex and difficult. That is why we are particularly pleased with the interest of the minister's office to accommodate our unique situation and we would hope that the members of this committee would be supportive in making this legislation work for the national blood operator.

I would like now to turn your attention to the five primary areas of concern that we have identified. We have enclosed in your package a summary of these issues and a suggested means of dealing with them. I would like now to take you through CBS's specific concerns. I would like to reiterate that it is the results of these concerns that we are interested in. The method of actually dealing with them by the Legislature is really of lesser importance to us than the actual concrete, practical result at the end of the day.

The first issue to address with you is CBS being a single health information custodian. As we have discussed, CBS operates as a fully integrated national blood system that requires critical donor information to be appropriately available throughout the system. The functions of a blood operator are not housed within single sites or facilities, but are conducted in a multitude of mobile collection clinics, fixed collection sites, blood centres, testing labs and processing labs located both throughout Ontario and throughout Canada. Information or privacy walls between provinces and territories would cripple the ability of CBS to operate on a national basis.

1120

As CBS currently operates six labs in Ontario that would be defined under the bill as health information custodians, CBS would be covered by this act. The re-



mainder of CBS's operations in Ontario would not meet that definition.

Although Bill 31 does provide a means for the minister to order that these six labs be treated as one health information custodian, the current wording does not provide for the designation to be extended to all CBS operations either in Ontario or on a national basis. The minister can, however, exclude the CBS labs. Consequently, a means does not currently exist to designate CBS's entire operation as a single health information custodian, which would be necessary to respect the integrity of a national blood system.

By example, our MAK Progesa system, which I referred to earlier, is a single database that provides information across the country. To have any lack of availability of that system would create a fundamental lack of ability to operate the system.

We would therefore suggest that this need could be accommodated by an amendment to the following provisions of schedule A: by excluding CBS from subsection 3(1) or by adding a new category of custodian that would include CBS specifically or by reference to a group.

The second matter I'd like to raise with you is the definition of health care and implied consent. The health information collected by CBS is primarily about its donors and is required to reduce or prevent the risk of transfusion-transmitted diseases to the recipient of their donation. We undertake a variety of levels of safety. The first level of safety is this record of donation. By questioning our donors as to risk behaviour, we can identify higher-risk cohorts which then can be excluded from the blood pool. The next major level of safety, of course, is testing. But this primary level of questioning our donors is an essential element to the safety of the blood system.

It is also necessary to be able to appropriately contact the donor should a transfusion-related event or post-transfusion condition in the recipient suggest the donor be tested.

Bill 31, as currently drafted, contains a default requirement for express consent when a custodian is not providing health care as defined. As CBS is currently covered by the bill through the operation of its labs in Ontario, it is necessary that its operations be included in the definition of health care and not subject to the default provision.

As currently drafted, it could be argued that CBS does meet the current definition as we provide a "service or procedure that is done for a health-related purpose" and that this is "carried out or provided to ... treat or maintain an individual's physical condition" or "is carried out" or performed "to prevent disease or injury or to promote health." However, it could also be argued that this provision does not include, in essence, the provision of a biological product such as blood and as such does not therefore include the blood system operator. It is this clarity that we seek.

Should CBS not be found to be included in the current definition, express consent would be required for trans-

fers of health information within CBS. As the system is integrated nationally, all necessary health information across the country would require this express consent from donors.

Currently, CBS has over 1.3 million individuals and their respective donor information in its database and is required by Health Canada guidelines to maintain this information indefinitely for look-back and trace-back purposes. Look back and trace back, by the way, are the processes we go through to identify either a disease in a recipient and to identify the donors who provided product to that recipient or when a donor is identified as having a transmittable disease to identify the recipients of that donor's product. If required to obtain the express consent of these donors to utilize this database, the time required to do so would be significant and could jeopardize the operation of the national blood system.

We would therefore suggest that to ensure clarity the definition of health care be amended to include the functions of a blood system operator or that section 20 be clarified to expressly include these same activities.

The third point to bring to your attention is the issue of withdrawal of consent and the need for the blood operator to maintain information indefinitely.

This is a major concern to CBS as blood operators are regulated by the federal government through Health Canada, which requires that blood operators retain donor information indefinitely. This was also a major issue in the Krever inquiry and is a natural consequence of the recommendations of that inquiry. This requirement is necessary for monitoring the safety of blood and blood products, to screen out donors who have been deferred, to conduct investigations to determine if a recipient has received contaminated blood and to notify a donor to be tested for a possible transfusion-transmitted infection.

The information collected and maintained by a blood operator differs from other health information collected on individuals in that it is not primarily collected for the purpose of treating that individual. Rather, it is required to reduce the risk and protect the health of the recipient of that individual's donation of blood.

If the withdrawal of consent leads to this information having to be placed in a lockbox, the result could include the withdrawal and destruction of product as it could no longer be traceable, failure to identify a previously deferred donor and the inability to trace back a donor for further testing, thereby compromising that donor's health. This would be a major crippling event for the operation of the blood system.

For these reasons, and on the guidance of Health Canada, blood operators maintain a record on all persons who apply to donate, including those who are deferred. This database now operates on a national basis and is a significant part of the blood system safety net.

We would therefore suggest that the bill be amended by adding an additional section that would not permit the withdrawal of consent where the personal health information pertains to a donation or testing for purposes of donation of blood or other body material.



The fourth point is with respect to donor retention and marketing. With the making of a donation of blood, the donor provides CBS with their name, current contact information and blood type. The deferral of a donor, either temporarily or indefinitely, is also contained in the CBS database. This information is used by CBS to contact past donors to ask them to make further blood donations.

The donor's blood type is critical information for CBS in identifying which individuals are needed to meet the current need for specific blood types. This is especially important when certain blood types are in low supply or in high demand or when very rare blood types are involved.

The current provisions of Bill 31 appear to be intended to prevent the use of health information for securing a monetary donation but inadvertently would also prevent the use of this information for the retention and identification of specific donors by blood type without the express consent of the donor.

As you may have already noted, the CBS national donor centre and database servers are located in Ontario, and so this provision has a truly national effect. As there are currently over 1.3 million donors in the CBS database of which over 450,000 are active donors, securing the consent of these donors prior to the planned implementation of this act would be an enormous, if not impossible, task.

The committee may also wish to note that donors are currently protected from unwanted callbacks by federal regulation, which prohibits CBS from attempting to recruit individuals who have indicated their desire to no longer be blood donors.

We would therefore suggest that this provision be refined to ensure the continued ability of the blood operator to retain donors. This can be done, we would suggest, in one of two ways: by regulation to exempt CBS from the provisions of section 32; or by amending section 32 of the act to exempt CBS.

One thing I might also note here is that we have undertaken a major campaign across the country by the name of Roll Up Your Sleeves, Canada! This is our effort to obtain over 160,000 new donors in order to meet the increasing demands for blood and blood products by hospitals in this country. The changing demographics and the increasing demands for hips and knees, cardiac surgery and cancer therapies have created a substantial and increasing demand for our products, which we must be able to recruit and retain donors in order to meet.

1130

The last piece I'd like to mention to you is with respect to our bone marrow registry. In addition to being a blood operator, CBS also operates the unrelated bone marrow donor registry for all of Canada. The registry maintains a list of potential bone marrow donors, including the necessary health information to be able to be matched with recipients. This registry conducts searches internationally to find a donor when one is not available in Canada. It is also searched by other international

registries when they are unable to locate a donor in their own country. Thus, this is not simply a provincial or a national matter, but a truly international health care initiative. Given advances in the science of stem cells and cord blood, these matters eventually will also probably arise.

To facilitate the operation of the registry, CBS will require that health information custodians, as defined in Bill 31, be able to disclose personal health information to Canadian Blood Services as contemplated in clause 38(1)(c) of the bill. We believe that Canadian Blood Services meets the conditions for this requirement as we compile and maintain a registry of personal information that relates to a specific disease or condition, such as the unrelated bone marrow donor registry, and also compiles information regarding the storage or donation of bodily substances.

We are therefore requesting that CBS be granted the necessary status by a regulation and that this regulation be effective at the time of the coming into force of the act to ensure no interruption in the operating ability of our UBMDR activities.

We have much appreciated the opportunity to make our presentation to you today. As a blood operator, our system is built on the confidence of our donors. Protecting the privacy of their personal information is key to maintaining that confidence. As a nationally integrated operation, we would seek your consideration and support in ensuring that Bill 31 will accommodate the unique aspects of operating this national blood system.

We would again like to thank the minister's staff and the minister's department and legal team for their efforts to date in working with us to address these various issues.

Thank you very much. We'd be happy to address any questions that you may have.

**The Chair:** Thank you very much for the presentation. I think we could take five minutes, each group, to ask questions. I will start with the government side.

**Mr Fonseca:** Thank you, CBS, for that presentation. It was very thorough.

In regard to all the amendments that you brought up, would a special regulatory provision related to blood collection services address your needs?

**Mr Gale:** It could very well address our needs. As I've mentioned earlier, the actual method by which our needs are addressed is really of lesser importance to us than actually having the needs addressed. Whether these be addressed by amendment to the bill or by some regulatory power that provides the confidence that these needs will be addressed, I would leave that to the legislative drafters and the legislative procedures as to what is the art of the possible.

**Mr Fonseca:** I wanted to ask one specific question in regard to when the donor is filling out this form. How much time between the filling out of the form and the giving of blood?

**Mr Gale:** Minutes.

**Mr Fonseca:** Have you ever had an instance where the donor decides within those five minutes that, "I don't want to give blood and I want that record destroyed"?

**Mr Gale:** I'd like to address actually three points that come up in your question.

First of all, this record of donation is filled out every time a donor comes. So it is something that is done at each and every donation.

Secondly, if a donor were to change their mind during the process, there is a process at the very end of the questioning and the information session that allows the donor to decide confidentially, without the presence of a nurse or any other individual, that they will have their unit of blood used or not used. So a confidential bar code is taken by the donor and placed on the record of donation. That bar code, unknown to the nurse or to the collection staff, will dictate that in fact that unit of blood can go ahead for processing or whether it is to be discarded. So notwithstanding the information provided, the donor has an opportunity to not have their blood enter the system.

**Mr Fonseca:** Prior to that, if the donor decides not to give blood?

**Mr Gale:** If the donor decides not to give blood, once the donor has applied—effectively shown up at the clinic and started the process—that information is in our system. We are required to keep it and maintain it for it to be available and accessible for the national blood system.

**The Chair:** Thank you.

**Mr Lou Rinaldi (Northumberland):** Thanks for the presentation. This gets very interesting as we move along with a different concept. The question I have for you, being of a national scope that your agency provides a service, and knowing that, I believe, there are some other provinces already with legislation in place, are your concerns handled in those provinces, or are we struggling there as well?

**Mr Gale:** We have a variety of issues, obviously. Being a national organization, we deal with a patchwork of legislation across the country, and it is important for us to comply in every jurisdiction in which we operate. We are able to handle these matters in a number of different ways in other provinces due to the way health care is defined, due to the way custodians are defined, due to the language of the legislation not being applicable to what we do. It varies in each and every jurisdiction. But clearly, in Ontario, because our national contact centre is based here, one of our consolidated testing labs is based here, the servers for our database are based here, it is really of crucial importance in this province.

**Mr Rinaldi:** Thank you.

**Mr Jeff Leal (Peterborough):** Do you have a full exchange of information with Héma-Québec, since it's different?

**Mr Gale:** We don't have full exchange of information with Héma-Québec, but we do work very closely with Héma-Québec to ensure that necessary information on health surveillance is exchanged, that anonymized data may be exchanged, and I say "may." We do have a co-operative relationship. For instance, if we are short of blood or blood products at a certain time, Héma-Québec

will assist us, as we will assist Héma-Québec. As a result, the traceability of product must be uniform. Héma-Québec also uses a MAK system, so the information is compatible.

Also, we have a relationship and an understanding with Héma-Québec that in fact we—CBS—actually collect blood in Gatineau on the other side of the river from Ottawa as it is more convenient for CBS to do it with our labs and processes there than it would be for Héma-Québec to do it.

So there is very clearly an exchange of information and a relationship, but it is not a full and complete exchange of information.

**Mr Leal:** Just one other quick question, Mr Chair. Many communities across Ontario provide their citizens with community awards, and one of the things they recognize is blood donations. If I know that Mr Rinaldi is a blood donor, but I don't know specifically how many donations he's given over a period of time, if I go to you, could you divulge that information to me?

**Mr Gale:** No, we wouldn't divulge that information to you.

**Mr Leal:** Thank you.

**The Chair:** The official opposition side now.

**Mr Ouellette:** Thank you very much for your presentation. A couple of questions: First of all, on page 5 you mention about the test results, that you contact individuals or a physician would contact individuals if there were any problems. Does that mean if anybody is donating blood and they're not contacted, they're cleared of the diseases you would be checking for?

**Mr Gale:** Yes. If a donor provided a unit of blood and it went through the testing program and tested negative for the various tests that we do and was released into the system, then there would be no reason to contact the donor for a health difficulty. I think the donor could take it from that that there are no disease markers that show up in their blood.

It may be that a recipient may be the recipient of multiple units. There are many cases in a trauma where there are hundreds of units that are pumped into a recipient. Should that recipient develop a transfusion-transmitted infection of some kind, then we may go back and contact all the donors—it could be a couple of hundred—to identify whether or not the source of that infection was in one of those multitude of donors. There could be a contact of a donor in that context, but if a donor is not contacted by a physician or by their own personal physician through us about the results of their individual test, then in all likelihood it can be taken that their blood is—

1140

**Mr Ouellette:** That was a bit of a personal thing, so now I know. But I'd like to know which ones were tested for, because I've never had call back. So that's a good thing. I think that would be a good marketing tool to be able to say you are being tested for these things for your organization.



Some of the other things are: Do you feel that this legislation will cause a training process for your volunteers who work at all the various sites? How onerous would that be on you, if that's what's going to proceed?

**Mr Gale:** Whenever legislation changes, there is always a training process, an understanding process, that has to be undertaken. I think that our staff across the country are very well versed, as a result of very high standards of regulatory compliance, to deal with changing regulations and changing requirements. I think our staff and our systems are very robust at this point in time. We are very conscious of privacy and always have been. I think we feel that by any standard of privacy we are compliant. The issue for us is not whether our staff are able to undertake the processes. Our issue is whether or not any of the requirements under the bill will consequentially affect our ability to function; not whether our staff will be able to handle them.

**Mr Ouellette:** Being that you're a national organization, will legislation in Ontario cause you to change processes throughout all the other jurisdictions in Canada where you currently operate, or are you going to have to put something specifically in place just for Ontario?

**Mr Gale:** We would not put something specifically in place for Ontario. We do regard ourselves as a nationally integrated, single unitary system. As a result, if there is an impact in the province of Ontario, it will be an impact across the country.

**Mr Ouellette:** So in other jurisdictions that have brought legislation similar to this forward, did you have to implement something at that time?

**Mr Gale:** We have made some modifications. The way I like to describe it is, rather than trying to adhere to the lowest common denominator, we actually try to adhere to the highest common denominator. We try to incorporate in our processes the requirements of all the provinces and territories to ensure that processes are met in every province, whether it be provincial lab licensing or through our nationally regulated Health Canada-governed activities. We will amend standard operating procedures or centre operating procedures to ensure that we are compliant at all levels. As you can probably gather from that, it is, at times, not an easy task.

**Mr John Yakabuski (Renfrew-Nipissing-Pembroke):** Thank you for your very informative presentation. As a blood donor for about 30 years myself, I certainly appreciate the changes that have already gone through in the collection system since back in the '70s. Certainly, it would seem, in a nutshell, that your mandate is to ensure the safety of blood and blood products being distributed to recipients throughout the country. With respect to the privacy legislation or some forms of legislation that you've been required to comply with that have been passed by other jurisdictions, how would this particular bill, without amendment, in the short answer, affect you both financially and in your ability to continue to provide the services you are currently providing under the mandate you have from the federal government?

**Mr Gale:** Let me answer that by example in the extreme. We have a blood donor—the example that I gave in my presentation of a blood donor in New Brunswick or a blood donor somewhere in this province—where the blood is received, information is put into our system and as a result of either a post-donation event or as a result of an adverse reaction in a recipient, it is determined that that person potentially does have an infectious disease—and it could have been, for instance, West Nile virus before there was testing.

If we were subject fully to the application of this current bill, there is the potential that the blood system could be shut down, because we would not be able to transfer information between sites. We would not be able to have a physician in Calgary, first of all, be the recipient of the information from the donation in Ontario and we would not be able, then, to notify back the information to potential other recipients or hospitals across this country as to the units of blood that are affected. We could potentially be prohibited from contacting the donor or the donor's physician. We could potentially be restricted from providing essential public health information to public health officials across the country. Our integrated national donor system would, in the extreme, be shut down. I would suggest to you that would, almost overnight, cripple the health care system across this country, for instance for such things as platelets. Platelets, which are an essential requirement for cancer therapies, have a very short shelf life. They must be used within five to seven days. If we are not able to do that, all of a sudden you're cancelling cancer therapies across this country almost immediately.

**Ms Martel:** Thank you for your presentation. I heard you say a couple of times that however this gets sorted out, you just want it to be sorted out. Let me ask a question about the legislative changes, because there are a number of pages of proposed changes. Did you do that yourself as legal counsel or did you have some assistance from the ministry staff?

**Mr Gale:** I'll let Elaine address that.

**Ms Elaine Ashfield:** Yes, we provided those to legislative counsel at the ministry's office in the course of our discussions. So those were amendments that I have proposed to them.

**Mr Gale:** These are ideas that we have put on the table. They are not necessarily definitive, they are not final; they are suggestions on our part as to how things might be addressed.

**Ms Martel:** As I look at the five areas that you're trying to deal with, there are fairly substantial changes to some of the sections; others are a wording here and there that is changed. My concern goes back to the suggestion that we might be able to do this by regulation, because the changes I see here are quite extensive to cover what you want to cover. This leads to a question that was previously raised, but maybe you can be more specific. In the other provinces, do these changes appear in regulation primarily or in the actual bill itself?

**Mr Gale:** It varies from province to province. In some of the provinces, the actual legislation itself does not

cause us difficulty. Therefore, we don't need to deal with it by regulation. So it varies on a case-by-case basis. In dealing with this, it's very hard to compare the legislation in the various provinces on these very specific issues because of the difference of treatment they have received. As a result, we have tried to focus on this bill itself and, rather than try through our own offices to harmonize provincial legislation across the country, which is a lovely theory, we've really just tried to identify what could be done with this bill itself to allow us to function as a national operator. What we do, then, within our own processes and procedures across the country, is accommodate those processes throughout our system to ensure that it works on an integrated basis.

**Ms Martel:** I appreciate that. I hope we can do as much as what you want through legislation versus the regulations, because there are quite extensive processes for regulation now. I appreciate that that process is going to be a public one, which I think is very helpful, but there is a lot in regulation already, so it's my hope the ministry can bring forward some amendments that will be to the actual bill itself versus trying to put most of this in the regulation.

**Mr Darren Praznik:** If I may just add to it, again, our point is that it has to work for us legally—we're not hung

up on the method—and we're certainly prepared to work with the drafters and the ministry staff to find ways that do. But it's also important in areas—there is one area we have referenced where we require a regulatory change. I think it was issue 5. That matter can be dealt with by regulation. The point we make is that where a regulation is required, it has to be in place for us on the day the act becomes law. That was why we flagged that, and it is another concern, so that we don't have a gap where we're not in compliance or not able to function.

**The Chair:** Thank you very much for taking the time. It's been very informative for us. Everything has been registered and will be looked at.

**Mr Gale:** If I may take the liberty, I never miss the opportunity, whenever I have more than two people in a room, first of all to thank those people who are blood donors and second to encourage those of you who aren't to become blood donors. If for some reason you can't, please bring a friend or a relative. It really is an important part of our system and we truly appreciate the efforts people make on our behalf.

**The Chair:** This concludes our hearings here in Kingston. Our next stop is in London tomorrow morning. Thank you again.

*The committee adjourned at 1150.*









## CONTENTS

Wednesday 4 February 2004

<b>Health Information Protection Act, 2003, Bill 31, <i>Mr Smitherman /</i></b> <b>Loi de 2003 sur la protection des renseignements sur la santé,</b> <b>projet de loi 31, <i>M. Smitherman</i> .....</b>	<b>G-151</b>
Kingston General Hospital; Hotel Dieu Hospital .....	G-151
Mr Neil McEvoy	
Ms Karen Humphreys Blake	
HIV and AIDS Legal Clinic Ontario .....	G-155
Ms Ruth Carey	
Canadian Blood Services .....	G-158
Mr Watson Gale	
Ms Elaine Ashfield	
Mr Darren Praznik	

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G-7

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## Assemblée législative de l'Ontario

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# Official Report of Debates (Hansard)

Thursday 5 February 2004

# Journal des débats (Hansard)

Jeudi 5 février 2004

## Standing committee on general government

Health Information  
Protection Act, 2003

## Comité permanent des affaires gouvernementales

Loi de 2003 sur la protection  
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## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Thursday 5 February 2004

Jeudi 5 février 2004

*The committee met at 1001 in the Hilton, London.*HEALTH INFORMATION  
PROTECTION ACT, 2003LOI DE 2003 SUR LA PROTECTION  
DES RENSEIGNEMENTS SUR LA SANTÉ

Consideration of Bill 31, An Act to enact and amend various Acts with respect to the protection of health information / Projet de loi 31, Loi édictant et modifiant diverses lois en ce qui a trait à la protection des renseignements sur la santé.

LONDON HEALTH SCIENCES  
FOUNDATION

**The Chair (Mr Jean-Marc Lalonde):** Good morning, everyone. On behalf of the standing committee on general government, I want to welcome you and thank you for taking the time to come down and give us a presentation of your concerns and comments that you have to make on Bill 31.

You have 20 minutes. If you're taking the whole 20 minutes, then there's no time left for question period. If there's any time left, it will be divided among the three parties, as long as we have more than one minute. If it is only one minute, I'll alternate today: One party gets the one minute once and then next time, it's another one.

We do have instant translation available also. If anyone wants the equipment, they could go to the technician. It's available there.

Chers amis, si vous avez l'intention d'écouter la traduction simultanée, nous avons des écouteurs disponibles que vous pouvez vous procurer ici de notre technicien.

Merci et bienvenue à l'audience publique.

**Mr Frank Kearney:** Good morning; bonjour. My name is Frank Kearney. I'm the chief operating officer of London Health Sciences Foundation.

I'd like to express my appreciation to the committee for hearing this submission. I'm speaking to you on behalf of the four hospital-related foundations here in London. I have with me two colleagues: Dominic Langley, who is the director of information management at London Health Sciences Foundation; and Ellen Frood, who is senior development officer of Parkwood Hospital Foundation.

Let me begin by painting a picture of the amount of support received by the London hospitals from their foundations. As you can see on this slide and in the presentation that you have in front of you, that support last year totalled \$31.4 million, which comes from southwestern Ontario and, significantly, from the greater London area.

That fundraising takes a number of different forms. Children's Health Foundation receives its funding from direct mail, community events and lottery. It does not have, obviously, a patient-calling program. Its patients are children. The other foundations—London Health Sciences Foundation, Parkwood Hospital Foundation and St Joseph's Health Care Foundation—employ a different mix of fundraising methodologies in order to raise the funds that I referred to.

I want to give you an example of the importance of fundraising, specifically to London Health Sciences Centre. The Ministry of Health and Long-Term Care and the hospital have worked on a \$270-million restructuring program for the London hospitals; \$100 million of that is coming from London Health Sciences Foundation. In fact, we will be later on this year announcing that we have raised more than that amount of money. So that's a very significant contribution to the improvement of health care in this region. As you know, the London hospitals are the tertiary care facility for a much broader area than just London.

To give you some idea of the importance of grateful patient programs, the two largest foundations receive between 5% and 10% of their revenue from first-time donations from grateful patients. But this is not the real picture. The grateful patients later become repeat donors. They leave bequests. They grow in affluence and increase their level of philanthropy and become major donors, and they participate in a host of community events, all of which are fundraising events or certainly promote health care and health consciousness in the area.

To give you an example of the acceptance of grateful patient programs, because we're all concerned about whether or not those programs are just a nuisance—they aren't—50% of grateful patient donors in the first year continue their support in subsequent years, and in some years that support can continue at a level of 80%. So it becomes a stream of support that goes on, in theory, forever, but practically certainly for a great number of years.



Another example is that 14% of patient donors indicate that they have established a bequest to a hospital averaging \$15,000. That could amount to an awful lot of money over a long period of time, and that's why the foundations can raise as much money as they do.

Hence, grateful patient programs constitute a large and continuous source of revenue, in effect replenishing the donor base of support for the foundations each year. It is the view of the foundations—and I must be very candid with the committee that I have no basis on which to base this, other than our own personal opinion—that the supply of new donors would be reduced by upwards of 90% if the hospitals had to rely on express consent for fundraising.

On this basis, the foundations and the hospitals will have an immediate cash loss in the first year of \$1.2 million, in terms of cash contributions. By the fifth year, because this is a continuous program, growing on itself, if you like, that would amount to \$2.9 million, and it would continue to rise in terms of the impact. But certainly over the first five years, if we were to go to express consent and if 90% of people chose to opt out, we would amass a loss of \$10.7 million among the four foundations in London, strictly from grateful patients.

Also, based upon historical patterns, this reduced level of contact with former patients would translate into a further \$45 million in bequests that those same former patients might not give in the future. Lack of contact with grateful patients would impact other revenue sources such as those I mentioned: major gifts, community fundraising events and so on.

There are other benefits to our contact program with grateful patients. When SARS was top of mind with the public, our communicators in call centres were contacting about 15,000 former patients a month. They got a lot of feedback from concerned citizens and were able and trained to disseminate information to the public to help answer those questions. Likewise, they were also trained to gather information and provide it to the hospitals so the hospitals could respond to the community's concerns and provide the information they were looking for. So there are by-products of some of the things we do, other than just fundraising.

The foundations support the concept of privacy and have done so in all their dealings over the years. The introduction of the federal legislation, the Personal Information Protection and Electronic Documents Act, perhaps heightened the sensitivity to privacy, as has this bill. But I certainly can tell you, because I was working with all of my colleagues on privacy, that the hospital foundations meet or exceed the requirements of the federal legislation.

Two of the foundations do not have in their databases any personal health information, as I define it—in other words, medical information—with respect to their donors. The two other foundations are in the process of deleting all that information from their files—not only their electronic files but also their physical files—and that's a massive undertaking. By March 31, and probably

much earlier, that will all have happened. So the foundations will not have what I call personal health information in their files.

It's also important to note that none of the foundations sells, rents or trades mailing lists, not even among themselves. The information we have, we keep and safeguard. It's also worthy of note that we follow the best practices established by all the major fundraising and professional organizations on the continent, some of whom I believe you've heard from in Toronto and one of whom you'll be hearing from later in the day. So we follow the best practices of the industry.

#### 1010

Where hospitals provide data to their foundation, that data is first filtered to remove all personal health information. It's also filtered to eliminate all patients who have asked not to be solicited. It's also filtered to eliminate patients whose type of treatment might be sensitive. Hence, we really are trying not to contact someone who doesn't want to be contacted or perhaps shouldn't be contacted. We're very sensitive to that.

The foundations themselves also do a certain amount of filtering. They receive information from patients and from other donors that they don't wish to be approached or solicited. We have separate files for that, and we make sure we don't repeat a call. Likewise, we look for other eliminations, such as patients whose address appears to be a nursing home, which would indicate that would be an inappropriate person to contact.

We do have some concerns about express consent. From the hospital's point of view, express consent will be a costly thing to implement, because you have to overtly deal with it at a time when patients are more concerned with their medical care than anything else. It's worthy of note that the present practice of the hospitals is to provide patients with notice and, at this time, a privacy publication which outlines their options and provides all the contact information one could have, or you can tell the hospital right then and there that you do not wish to be approached for fundraising and a number of other purposes that are outlined in the privacy statement.

All the foundations wait at least two months, and very typically much more than that, before contacting a former patient, and they typically write to that former patient before contacting them by phone, giving them an opportunity to opt out.

Patients accept implied consent; they have for years. But let's take a look at some statistics. In London Health Sciences Centre and St Joseph's Health Care in the month of January, when all the publicity in the media was focused on privacy and privacy legislation, only four patients out of 32,000 asked to opt out of fundraising. I can't even calculate that number as a percentage; it's something like one one-thousandth. Moreover, when our call centre was contacting former patients by phone—those would be patients from the last calendar year—only 15 former patients out of 15,000 indicated that they did not want to be solicited by phone. So former patients



accept the concept of being approached for fundraising and there is not a lot of objection to fundraising.

One of the concerns of the hospital foundations is that they'd like to be operating on a level playing field with other charitable organizations. The dollars available for philanthropy are obviously finite, and requiring express consent for hospital foundations while others do not have to have express consent would disadvantage the hospital foundations relative to other charities and, as a consequence, would only add to the pressures on government to fund health care and health care facilities.

So the four hospital foundations in London ask for some clarity in the bill. The bill provides that demographic information about an individual—such as name, address and telephone number—is identifying information. Then, when defining personal health information, “identifying information” is used as a term: Identifying information about an individual is personal health information if that information relates to the providing of health care to the individual. Later, when talking about fundraising in section 31, the bill states: “A health information custodian shall not collect, use or disclose personal health information about an individual for the purpose of fundraising activities unless the individual expressly consents....” Some would regard this as triggering the need to obtain express consent for fundraising in every instance, even if the hospital foundation only receives the name, address and telephone number relating to a former patient.

The foundations support the comments made by the Information and Privacy Commissioner of Ontario in her submission to you that “a requirement for express consent would have an adverse impact on a health care organization’s ability to raise much-needed funds.” The foundations therefore ask that the wording of Bill 31 be clarified to allow patient fundraising to proceed on the basis of implied consent, provided that the foundations only have access to what I call demographic information; namely, name, address and telephone number.

This is inconsistent with the Ontario Hospital Association’s position. In their Guidelines for Managing Privacy, Data Protection and Security that organization recommends “that hospitals should only be required to provide a notice to patients informing them about the use of their personal information for hospital fundraising activities.” The suggestion is that there is no need for express consent; implied consent will be adequate. Therefore, the foundations and the hospital ask that Bill 31 be clarified such that they can rely on implied consent on the basis previously outlined.

In conclusion, implied consent has been very well received by grateful patients for many years throughout the province, and in the case of London has allowed foundations to raise well over \$100 million—and I mean well over \$100 million—in recent years.

Thank you, Mr Chairman and committee members. I’m open to any questions you have.

**The Chair:** We have seven minutes left, so it’s going to be divided among the three parties. Next it is the official opposition’s turn.

**Mrs Elizabeth Witmer (Kitchener-Waterloo):**

Thank you very much for your presentation. I think the truth is that fundraising has become a much-needed source of revenue for hospitals over the years. With and all of the restructuring that’s taking place in Ontario, whether it’s a new hospital or an addition or expansion, if we hadn’t had the public contributing we certainly wouldn’t be seeing these new, expanded services to meet the growing needs of our population.

I have a question on slide 11—support of privacy. You say that the hospital foundations do not have any personal health information. So at the present time you are now at a point where all you’ll have is really the name and the address.

**Mr Kearney:** In two cases that’s correct. In two cases, because of some systems deficiencies, the fee that came from the hospital to two of the foundations contained some personal health information, such as the discharge department of the patient, which is being removed from all of the files, both hard copy and electronic copy. It wasn’t noted at the time that it really was inappropriate to have that in the foundation.

In the case of London Health Sciences Foundation, and in the case of Children’s, which of course doesn’t have patients in the first place, there is no personal health information in any of the files. We have gone through the steps of reviewing all of our files to eliminate anything that might inadvertently be there, and the other two foundations are actively, as we speak, eliminating all such information.

**Mrs Witmer:** I was pleased to see as well that you were trying to eliminate from your list people in nursing homes, who obviously would be much more vulnerable in that situation; also people with treatment you might term to be sensitive. Would that be province-wide? Would that be what all foundations are be endeavouring to do?

**Mr Kearney:** I can’t say that. I don’t have knowledge of that. I would think as a pragmatic matter that would be an appropriate thing to do. For example, a one-day gynaecological experience would not be someone you should call. Hence, for years we’ve excluded anyone who has gone through that kind of a treatment, someone who’s been in mental health, that type of thing. As a pragmatic matter, a reasonable person would eliminate those people, first from a cost point of view of approaching them, but more important from the fact that this would be very distressful to those individuals. I didn’t mention but we also spend every morning looking through the newspapers for people who are deceased so as to eliminate them from the files of the college; for example, so we don’t cause any distress to a family by calling the family—“I’m sorry, but so-and-so died several days ago.” We take steps to eliminate that type of occurrence as well.

**Ms Shelley Martel (Nickel Belt):** Thank you for being here this morning. On your slide 15 you say, “All of the hospitals provide patients with notice and/or a privacy publication.” I’m not sure what that means.



**Mr Kearney:** The Ontario Hospital Association suggests that notice, ie signage in all of the public areas, would be appropriate. As it turns out, the hospitals in London have chosen to actually provide each patient with a privacy policy statement, which outlines the purposes for which the information is being collected. It also provides for an opt-out opportunity, giving the name of the person to contact, the telephone number, fax number, e-mail address and so on, and a Web site address as well.

1020

**Ms Martel:** That's given to them at the point of admission?

**Mr Kearney:** At the point of admission, that's correct.

**Ms Martel:** If they come through emerg, what happens?

**Mr Kearney:** The policy is to give them the documentation. Remembering, if you think through the process they would come through—there might be a traumatic situation and there might be a family member or other person overseeing their care; nonetheless, among the information they receive is the privacy policy statement of the hospital. That is taken as a take-away so it can be looked at at a more appropriate time to determine whether or not they wish to have their information used for a number of purposes, one of which is fundraising.

Also remembering that it would be most typical not to approach that patient for two to six months afterwards, that gives them a great deal of time to actually say, "Do you know what? I'd rather not be phoned."

**Ms Martel:** So the statement itself at some point explicitly references fundraising?

**Mr Kearney:** Yes, it does. I don't have a copy of the hospital's policy statement, but it does very specifically address the question of fundraising. It uses exactly that word, "fundraising."

**Ms Martel:** There's a statement you can sign if you want to opt out. Does it essentially say, "Don't contact me for fundraising"?

**Mr Kearney:** At the present time what is there is a person to whom you could say, "I want to opt out." Also, there are all the contact points to opt out.

**Ms Martel:** Just let me back up. If you do it at admissions, is it the hospital staff person who is providing that at admissions?

**Mr Kearney:** Yes, it is.

**Ms Martel:** So that's happening now.

**Mr Kearney:** That's happening now. That's PIPEDA.

**The Chair:** The government side, Mr Leal.

**Mr Jeff Leal (Peterborough):** Thanks very much for your presentation. My question is, if I was to make an original donation to your foundation, how many times would I give a second and third and fourth time? Do you track that in terms of people who make donations to your foundation?

**Mr Kearney:** We have to track the donations.

**Mr Leal:** Typically, what is the sort of pathway, or how many people would give additional donations?

**Mr Kearney:** If it's a grateful patient program, approximately 50% would repeat in the first year, and in our case 80% continue to give thereafter. The number obviously includes people who might move away, people who might live far away from London and don't have the affinity to the hospital in London that a local person might have and that type of thing.

**Mr Leal:** We've been told earlier in other submissions that as people give additional gifts they get higher in value each time. Is it your experience?

**Mr Kearney:** That is our observation as well. If I were a young person receiving medical treatment and gave a small gift, as I got older and hopefully more prosperous, I would presumably increase my giving as a result of my increased ability to give.

**Mr Leal:** Thank you very much, sir.

**The Chair:** Ms Wynne, quickly.

**Ms Kathleen O. Wynne (Don Valley West):** I just wanted to check—you're talking about implied consent, but in the process that you just described it really sounds like an opt-out alternative.

**Mr Kearney:** The hospitals are not expressly asking the patient or the person taking care of that patient to sign them up for fundraising. Instead, they're providing the means for them to opt out. That's implied consent.

**Ms Wynne:** So the first that you described would be express consent, which is what's in the bill now.

**Mr Kearney:** That's correct.

**Ms Wynne:** What you're suggesting is that an opt-out alternative would be fine by you, because that's what happening now?

**Mr Kearney:** That's what's happening now and that's what has been happening for years.

**Ms Wynne:** So it wouldn't have to be implied consent, which would be that we assume that everything is fine? You're fine with an opt-out process.

**Mr Kearney:** Opt-out and implied consent are almost the same thing, but yes, we're fine with that. We're seeking clarity on the bill. As the bill reads right now, it could be construed that we have to get express consent—

**Ms Wynne:** And you think across the province that demographic information—name, address, phone number—is what foundations should have?

**Mr Kearney:** That's what foundations should have. Foundations typically are separate—certainly the larger ones—from the hospital.

**Ms Wynne:** Right. But you don't see any need for any more information than that?

**Mr Kearney:** We don't see any more need. There were times when we looked at information like what we would call segmented data, so we might approach a patient knowing that they had an interest in a certain field, such as cardiac or something like that. We decided a year or so ago that that type of information—

**The Chair:** Sorry. Our time has expired. Thank you very much for taking the time to bring to our attention your concerns.

## HOSPITAL PSYCHOLOGY ASSOCIATION OF ONTARIO

**The Chair:** The next group will be the Hospital Psychology Association of Ontario, Ian Nicholson. For our record purposes, if you could state your name and your position.

**Dr Ian Nicholson:** I'm Dr Ian Nicholson. I'm a member and past president of the Hospital Psychology Association of Ontario.

The Hospital Psychology Association of Ontario represents individuals in leadership roles in psychology services across the hospitals in the province.

As the members are likely well aware, psychologists in the province have been regulated as health professionals since 1960 and have been an integral part of hospital service for several decades.

We want to thank you for the opportunity to come and speak with you about this legislation. We have been tracking its various permutations over the years and are quite happy to give our comments on the most recent version.

We first want to point out a handful of things that we see as really exemplary. But before we get to those particular points, we do want to just generally say how very pleased we are that this has been put forward. We see it as much, much improved over both the previous provincial draft, Bill 159, and the federal legislation that is now in force. We see it as being much more a strong balance between the needs of the health care practitioner and the needs of the individual. So we do want to strongly indicate how much we're supporting this piece of legislation.

Some of the key points that we feel are particularly important and want to support are the reasonableness and the limits put forth on the collection of personal health information. We think the wording of that is very strong and we support that: the way the wording is in section 39, allowing the disclosure of personal health information for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons.

We've continued to have ongoing concerns about who is a personal health information custodian and who is not, and we would think that insurance companies and the WSIB could be listed as personal health information custodians. While they're not included, from our reading of this legislation, in that mechanism, we are happy to see a number of the other limits put on the use of the information that is given to other custodians.

In clause 53(9)(b), we strongly support the splitting out of professional opinion or observation from other pieces of health information as important. We also strongly want to support section 72's recognition of the need for public input before making regulations. The devil is often in the details, and we see that as an important piece we want to support.

There are some other things that we do support but would like to see changed somewhat. I guess what I'd like to do in the interests of time is move forward to

some of the areas of concern that we have identified, areas that we support but would like to see a couple of changes included in that.

**1030**

In the definition of "health care practitioner," we're very strongly supportive that it's beyond just regulated health professionals. We are glad for that broad definition. We would like to add, though, that because of the recognition, particularly by HPRAC in its review of the harm clause in RHPA, we would support and like to see the phrase "including emotional counselling" put in clause (d), that says "any ... person whose primary function is to provide health care for payment." A lot of providers of emotional counselling services do not see themselves, often, as health care providers and say, "I'm not providing health care; I'm just giving some support for this person." But they're getting paid for offering that support, and we feel it's important that those individuals be identified as being included in here.

In section 4, we think there's actually likely an error in the drafting of the legislation. Clause 4(1)(a), when it talks about personal health information, including the medical history of the individual's family—it's about the only place in the legislation where there's specific reference to "medical" information, as opposed to "health" information. We'd like to point that out to the committee and hope that could be changed to that all family "health history" is included as part of personal health information.

For example, if you're assessing someone for learning disabilities versus neuropsychological deficits from head injury, it's important to recognize whether that person has a family history of learning disabilities, yet that is not included. That would not be in medical history, but personal family health history.

Section 23: We like the recognition of children under 16 being able to have the capacity to make decisions around disclosures of their own personal health information. We do wonder about the way it is worded and suggest an alternate wording for that, to make it an even clearer point. It is now divided into two sections, and we think that if it's collapsed into one, it would make a clearer and more definite point supporting competent individuals under the age of 16.

We have some concerns with regard to research. I think part of the issue that goes through this—perhaps this will come out through regulation, or perhaps it might be more appropriate to come out through change in some of the wording of the legislation—is basically, what is research? It talks about the health care custodian sharing information with the researcher and the health care custodian doing quality evaluations of the health care that's going on. But what if the health care custodian is doing something that might be termed research if they had given the data over to somebody else? If they're doing it on their own data from their own patients, from patient records they've kept for years, is that considered research? It's unclear in reviewing the material and it would be of benefit if there could be a clearer definition



of the difference between quality assurance evaluations and research. What we have often taken in the past is that if you are collecting data for the purposes of health care and then one is reviewing one's own information that one has collected on patients, that would be considered more quality assurance, quality evaluations, even if it were to be published or presented later to colleagues.

Section 49: We very strongly support the exemption for raw data from standardized and psychological tests and assessments. We see that as very important to support the continued use of those assessments. When those assessment tools go into the public domain, they often lose a lot of their utility. If the answers were known for all the questions on an IQ test and could simply be memorized, it would certainly impact the ability to use those tests in the future. Those tests take years to develop and are tested on tens of thousands of people before they're employed. If they go into the public domain, it seriously damages their validity.

So we would suggest that some of the wording from the American Psychological Association's ethics codes with regard to test data be included to include raw unscaled scores and the individual's responses to test questions or stimuli, and that test materials also be included in that section to include manuals, instruments, protocols and test questions or stimuli.

Section 50: There is similar wording that's used back in 39 about exempting access to that information if it could result in a risk of serious harm to the treatment or recovery of the individual, or risk of serious bodily harm to the individual or another person. Certainly when HPRAC reviewed RHPA, the harm clause had been stated as "serious physical harm," and their review indicated that that was much too narrow. They suggested removing the word "serious" and making it physical and psychological harm.

One example that a staff member shared with me recently is a patient who came in for depression and anxiety at the age of 13. During the course of the assessment, the psychologist was told that the child had been adopted and the child did not know that yet. At the age of 15 the child was curious and wanted to take a look at their health record to see what had been said about them and what the psychologist was saying, and was still not aware that they had been adopted. If the child were to review that information, that would not be considered serious bodily harm, but it certainly could be considered psychological harm. We would like to see that subsection of section 50 changed to, instead of "serious bodily harm," "bodily or psychological harm to the individual or another person."

Lastly, we do have one concern with issues around correction to the record. At the present time, if a patient comes to me and asks me to change their record because an egregious error has been found which I agree with, the legislation indicates that I would send a note about that written correction to individuals to whom I have sent that health information. However, those are not necessarily the only people that could go to. For example, if I send a

report to a family doctor about a patient's psychological condition and wonder about what mediation would be appropriate for that person and they then send a copy of my report off to a psychiatrist for consultation, there is no requirement under the current rules as stated here—at least in our reading of it—that the family doctor, when they receive notice of the correction of the report, has any responsibility to forward that information to any individual or organization that they have since forwarded a copy of my report to. We would see it as important that when someone receives a correction to a report, they have the responsibility of forwarding that correction on to anyone they have already sent a copy of that report to.

I want to reiterate what I said at the beginning. While we see these as important concerns, we don't want that to undermine our strong support for this current legislation as being far better for health care and the individuals receiving health care in Ontario than the current federal legislation and the previous versions of this legislation which have been discussed in Ontario in recent years.

**The Chair:** Very good. Thank you. We have eight minutes left. We'll start with Ms Martel.

**Ms Martel:** Thank you for being here today. I want to deal with your definition of raw data, because this came up in a previous session. When you refer to raw data, if I am correct, the reference there that you want access not permitted to is essentially the questions themselves, the test questions.

1040

**Dr Nicholson:** That's right. Sometimes it's because, given the nature of the test questions, it's very difficult to separate the question from the response.

If a person in part of a neuropsychological test is putting a block design together or trying to work through a maze to see about their ability, due to frontal lobe damage, for forward planning, those have to be recorded in such a way that the response and the question are really together. It's difficult, if not impossible, to separate out the two. So we want to ensure that the response is included as well.

Another example would be if on a general information test one asks, "What is the meaning of" a certain word, and someone's response is, "I believe that this certain word means" whatever. That is recorded in its entirety, as it should be. Then the question and the response are together, and it's impossible to separate the two out.

**Ms Martel:** OK. If we were to move with the amendment that you suggest, which is to increase what would be protected, essentially, from access, at the end of the day, what would an individual be entitled to receive? What would they get then from the psychological assessment?

**Dr Nicholson:** They would be able to receive the results of the assessment as interpreted by the psychologist, and they would also be able to receive general scores about overall performance. But as I say, just the raw individual items are often very confusing for individuals who may not be aware of what exactly all of these mean. Also, as I say, if they were to get out into the



public domain, it would seriously undermine the validity of these tests in the future.

**Ms Martel:** Thank you very much.

**Mr Leal:** Just to follow up from Ms Martel, my colleague Mr Flaherty asked a question in Sault Ste Marie regarding the release of raw data. He has extensive background, being a lawyer, and is used to psychological testing. He thought there wasn't really a serious issue of providing that raw data material. Could you just comment on that?

**Dr Nicholson:** It depends on the raw data. For example, the raw data in a common paper and pencil test of psychopathology might be just a shape where somebody clicks yes, no, yes, no, yes, no, yes, yes, no, no. Releasing that to somebody is not going to damage anything. It's not going to interfere with the test. However, in some of the intellectual and neuropsychological tests, it's very difficult to separate out the raw data from the questions. The two are often one and the same. If you require that the raw data be released, it would also require that the tests themselves, in many ways, be released.

**Mr Leal:** OK. Thank you very much.

**The Chair:** On the official opposition side, Mrs Witmer.

**Mrs Witmer:** Thank you very much for your presentation, Mr Nicholson.

If we take a look at what you're suggesting here, the addition of the phrase "including emotional counselling" in that definition where we talk about the health practitioner, who are we referring to that isn't included without adding that?

**Dr Nicholson:** It would be more, I think, ensuring that there is the recognition that emotional counselling is a form of health care. Unfortunately, what one sees is the individual saying, "I'm not providing health care. I'm just offering emotional counselling." There is in some quarters, unfortunately, the belief that the two are separate, and in many ways there was the view that emotional counselling is not hazardous. HPRAC, when they went through their review a couple of years ago, did support the idea that emotional counselling can be hazardous and should be looked upon as—and, as a result, we interpret it as being recognized as—a health care activity. None of those changes that were recommended by HPRAC, as far as we're aware, have been acted upon yet.

We would hope that by including this sort of phrase within the legislation, it would ensure that those people are captured and that the individuals who see those people, whom we would consider to be health care providers, are given the same protection for their health information.

**Mrs Witmer:** Would these be people who are now covered within the act or outside of the act? Are there other groups of people that you're referring to?

**Dr Nicholson:** That's a good point. One of the reasons we want to have that in there is to make it clear that they would be covered. We would see the current wording of

clause (d) as being dependent upon its interpretation. We would not want it to be dependent on interpretation; we would like it to be much clearer.

**The Chair:** Thank you, Dr Nicholson, for taking the time and informing us about your concerns.

#### FALSE MEMORY SYNDROME FOUNDATION, CANADA

**The Chair:** The next group is the Canadian branch of the False Memory Syndrome Foundation. Could you come up and give us your name and position for our record purposes.

**Mr Adriaan Mak:** My name is Adriaan Mak, and the document you have from me is the brief that begins with "Brief respectfully submitted." That's the document.

**Ms Claudette Grieb:** I will speak first. My name is Claudette Grieb. My family suffered an unparalleled tragedy: the death of my daughter, Jackie, and my granddaughter, Dagmar. My medical advisers have stated that my daughter's mental illness was misdiagnosed and consequently maltreated. Prompt, skilled psychiatric care could have saved the lives of my girls.

Unfortunately, my daughter was subjected to unproven therapy by the unlicensed counsellor, Chris Hutchinson, and a government-supported community centre. The Community Justice Initiatives of Waterloo region is run by facilitators who provide this destructive recovered memory therapy. This practice alienated my daughter from her family roots and generated false allegations against myself and others. In effect, it blocked her access to competent medical care and family support that could have saved her life and the life of my little granddaughter.

Records of significant importance have been denied to me on the alleged basis of confidentiality. As executrix, I sought records concerning my daughter from the Community Justice Initiatives but was provided with only limited documentation of Jackie's treatment. Their intake form automatically lists me as a sexual abuser without any investigation or scintilla of proof, based only on their dangerous mindset.

Unlicensed and unregulated therapists are accountable to no one, and they are free to alter and even destroy their files. Animals in Ontario have better protection than our mentally ill. Fortunately, I retrieved evidence in my deceased daughter's ransacked apartment strongly indicating the mental health abuse to which she was subjected. It had been evident that abuse had been manufactured in a cult-like, guru-driven atmosphere where transference of other abuse stories became the ownership of vulnerable clients, who oftentimes suffered from very serious mental disorders. This funded quackery is where millions and millions of our tax dollars are being squandered.

At the treatment centre, my daughter repeatedly told these facilitators and also stated in writing that she was becoming increasingly isolated, depressed and suicidal. Their answer was, "You have to get worse before you become better." In this case, it led to the deaths of my



girls. On June 4, 1998, my daughter was left totally isolated and penniless, which drove her insane and she took her own life. Jackie hanged her own daughter, my little Dagmar, and then Jackie hanged herself.

1050

As things stand, there is no prevention, accountability or recovery. A strong mechanism needs to be put in place to immediately investigate a complaint by third parties before another tragedy occurs. Anyone who does harm must be accountable for their actions and investigators must be given the right to obtain properly kept files. Many elderly and grieving parents have lost not only their misguided children but also everything they worked for a lifetime to acquire. Financial retribution should be required of individuals or organizations that have caused havoc and unbearable suffering.

Information in the hands of the police regarding my daughter's treatment by Chris Hutchinson has been totally denied to me by the provincial freedom-of-information sector of the government for the next 30 years. This means the only individual being protected here is the unlicensed counsellor and her filthy lies. Absolute privacy should not be abused at the expense of the safety of the public and as an excuse to prevent the wrongfully accused from obtaining the exoneration they are entitled to. We demand that our names be cleared from false records within any government files and in any mental health facility. How can we cross the border if we have been branded? We know what happened in the Arar case.

Finally, following this tragedy, the counsellor and this community centre tried to distance themselves, citing confidentiality. By the way, there's a serious police cover-up here too. I have been treated horribly by the police. They sided with the therapist.

My daughter was a gifted artist and donated one of her paintings to this centre. After Jackie's death, the Community Justice Initiatives placed this painting up for sale at the Eldon Gallery—I viewed it—thus profiting from my daughter's death. During Jackie's life they took fees from her for therapy, being well aware that she was a single welfare mom.

I want transparency and I want accountability while the Ministry of Community and Social Services is still funding this Community Justice Initiatives centre of Waterloo region. The need to sustain our health care system should terminate foolish funding of dangerous programs that kill people and destroy families. The number of community support groups should be cut back to one or two in a community, and they should be run by competent mental health experts who are accountable professionally and who follow fact-based, scientifically proven health practices. Above all, do no harm.

Now, here we go buck-passing, buck-passing, buck-passing. I want action and I want accountability. If seeing is believing, how do I get through to you people? This is what they destroyed: a beautiful relationship. My daughter was very mentally ill and they drove her over the edge. This is the last memory of my grandbaby. Have I made my point?

**Dr Harold Merskey:** My name is Harold Merskey, and there is a document entitled Privacy and Access to Medical Records in front of you. Those are the comments I have to make, which I'll go over shortly. I will mention that there is a brief curriculum vitae attached indicating my knowledge of this topic or some parts of which indicate my knowledge of this topic.

I should say that I have advised Mrs Grieb. She is not my patient, although she has confided in me and sought advice on the situation, her experiences and the problems she has addressed in her talk.

I am a professor emeritus of psychiatry and have been consulted by a number of other patients with respect to false accusations made against them on the basis of what are called recovered memories, and which are unreliable. With this document, I've also provided a position statement of the Canadian Psychiatric Association, which deals with adult recovered memories of childhood sexual abuse—I'll come to the case of Jacqueline Grieb shortly.

I should say that I'm also a member of the scientific advisory board of the False Memory Syndrome Foundation, which is a not-for-profit organization based in Philadelphia. The organization has many Canadian members. I'm not a member; I'm an adviser. The board of advisers is a very distinguished group to which I have felt honoured to belong, comprised of leading scientists and others who have been very concerned about the misapplication of psychological treatment and its misuse.

The case of Jacqueline Grieb and her daughter Dagmar and the mother and grandmother, Claudette, is an extreme example of the consequences of the common phenomenon of parents being falsely blamed in the treatment of their children for supposed sexual abuse in childhood. The patients who blame parents have ordinarily tended to see psychiatrists or other physicians, psychologists or still less well-qualified therapists for help with problems in living, psychological difficulties and often depression. A few psychiatrists have engaged in this, more psychologists—there are more overall—and many more unlicensed practitioners. All of them, I think we can now see in the light of current knowledge, were conducting malpractice.

The relevance of this to records is that if the records of treatment become available, they serve as an essential foundation for the acquittal of innocent people who have been repeatedly charged with these offences. In my personal experience, between 1994 and 1999, I took part in a dozen criminal cases as an expert witness for the defence, dealing with false accusations of sexual abuse. In all but one case, there was a complete acquittal, and in the single case, there was conviction on a trivial charge, which I still think was wrongful conviction.

The frequency of this phenomenon is great. Probably there are few towns or cities in the country where somebody has not made such an accusation and where there has even been a trial of the matter. We can never know the exact frequency of false accusations, but they are unfortunately much more common than some of those who are particularly concerned about abuse in general



would have you believe. Again, I give some indication of that in this document. The figures may be as high as 1% of the population of the United States, and probably Canada too, who have been affected by a member of the family having such false ideas over a period of, say, three or four years in the 1990s.

The problem is not as bad as it was, but it remains important for innocent people to secure adequate access to medical records. For a psychiatrist to say this is, of course, somewhat in contradiction to what most of my colleagues are telling you. But I think it is necessary in the interests of justice and to prevent almost as bad an offence as the abuse itself. To be convicted or even slandered without conviction for an offence so grievous as sexual abuse is nasty, is horrible, in proportion to the extent of the abuse itself. I think, in all fairness, one should be looking to protect those innocent members of the community, many of them elderly, who have suffered from the alienation of their children's sympathies by extremely bad therapy.

1100

I was honoured by Mrs Grieb asking me to advise her. It is my comment that the death of Jacqueline Grieb was probably preventable. She had a severe depression, which came on quite quickly. She was alienated from her family in the course of therapy, very quickly also. Given access to proper medical care, there is no guarantee that she would have survived, but it is much more likely that had she had formal psychiatric treatment, she would have survived.

A few years ago, two of my friends and I published an article, which is also provided for you as an example. I wouldn't expect you to read all of it, but in the summary we make it clear that in comparing a group of people who had, as it happens, a multiple personality disorder diagnosed—a rather fanciful diagnosis, in my view—who were treated by recovered memory treatments, attempts at suicide and also at self-harm continued, without changing much in frequency, whereas a group of patients with depression who were diagnosed and treated in a regular fashion in our local psychiatric hospital here in London actually did far better, and their frequency of suicide attempts after they had treatment and were discharged fell by 90%. Those sorts of comparisons are important to understand that there is value in appropriate treatment. Had Jacqueline Grieb had appropriate treatment, there is probably a better than 80% chance that she would still be with us, and her daughter as well.

The implications of what I have to say are that in passing an act that affects access to records, those of us who have been concerned about this issue would hope that members of the Legislature would make every effort to see that it is not made harder for people to achieve justice and harder for individuals to be protected from slander. Thank you.

**The Chair:** We have a few minutes left. I'll go the government side.

**Mr Mak:** May I make a bit of a presentation myself? All I have to say really is contained in the brief. I want to

draw your attention to a list of case histories. They are not as serious as the one we have heard, although there have been other suicides.

I have been listening for the last 12 years as contact person for people falsely accused of childhood sexual abuse in 200 cases in southwestern Ontario—London and surroundings—where people who have been in therapy had no memory of childhood sexual abuse but were told that their symptoms indicated there was childhood sexual abuse and that they were in deep denial. The scientific word for this deep denial now seems to be “dissociative amnesia.” It used to be “repressed memories.” In the course of highly suggestive treatments, these people came to believe that they were sexually abused, although they were not. When the cases came to court, in some cases there was always clear evidence that the abuse could not have happened because of the inconsistencies and other so-called corroborative evidence that proved it could not have happened in the way the person was certainly remembering it, or re-remembering it.

My own son has gone through this process of therapy. He has recovered from this terrible therapy. He now understands what happened, and his own case is described as the last one in the series I have presented to you. He tells me what strong pressure tactics occur in such therapy. All these people entered therapy with a problem, some of them with a very deep-seated emotional problem that really should require the attention of a qualified psychiatrist or a fully qualified psychologist; not a graduate from a teachers' college, but people who are far better qualified than that.

I would suggest that when in the course of therapy a client—and of course, the person has an emotional problem, and when this emotional problem is found to be childhood sexual abuse, that the counsellor or therapist refer this case to a qualified professional who can make a proper, fully informed judgment and that it not be left to some sexual abuse counsellor or whoever else, qualified or unqualified. There are many unqualified, unregulated counsellors who work in this field.

**Ms Grieb:** Quacks.

**Mr Mak:** Yes, well, OK. I would say these people should certainly get a second opinion from someone who is fully qualified at a psychiatric institution or at least a top-level, trained clinical psychologist. Not everyone who has a PhD in psychology is qualified to do clinical work, and certainly masters of social work who have specialized in clinical work should be bottom-level practitioners who, when they come across a serious case, should say, “Hands off. This is too much for me to handle. I'm going to get a second opinion and refer this person to a psychiatrist.”

That is basically all I have to say. It's all in my brief. I have heard from across Canada close to 2,000 stories; from around London, around 200. Of the close to 2,000 cases that I have recorded in Canada, 240 went to the courts and over 200 of these were acquitted, which shows you that therapy did tremendous damage. Judges were the first to catch on, before some mental health professionals did. That is a very encouraging thing.



The Canadian Psychological Association knows that. I have one appendix here, and they couldn't word it more strongly: "To the extent that some people may have been convicted of offences based solely upon the testimony of people's recovered memories, the Canadian Psychological Association urges the Minister of Justice"—that is, the federal minister; she is now our Deputy Prime Minister—"to conduct a special inquiry into this category of convictions."

This statement was followed up by a letter signed by 100 professionals. The letter was drafted by the president of the Criminal Lawyers' Association, Mr Alan Gold in Toronto. It was sent to the Minister of Justice. The Minister of Justice has not acted on either the request by the Canadian Psychological Association or the request of Mr Alan Gold and the Criminal Lawyers' Association.

**The Chair:** Sorry, Mr Mak. Our time is up at present. There is no time left for questions, but you can rest assured that your comments have been recorded and will appear in the Hansard. Thank you again for taking the time, all of you: Doctor, Mrs Grieb, and yourself, Mr Mak.

#### LONDON HEALTH SCIENCES CENTRE ST JOSEPH'S HEALTH CARE LONDON

**The Chair:** The next group is St Joseph's health centre. As you are aware, you have 20 minutes. You could take the whole 20 minutes for your presentation, or, if there is time left, for a question-and-answer period at the end. If you could tell us your name and your position for our record purposes.

**Ms Diane Beattie:** I'm Diane Beattie. I'm the integrated vice-president of health information and the chief information officer for St Joseph's Health Care London and the London Health Sciences Centre.

**Ms Judy Farrell:** I am Judy Farrell. I'm the integrated leader for health information and privacy for the two London hospitals.

1110

**Ms Beattie:** Thank you for the opportunity to appear before your committee this morning. I think copies of my remarks are before you.

The hospitals applaud and support the government's initiative to introduce Bill 31, The Health Information Protection Act, and its two components, the Personal Health Information Protection Act, 2003, and the Quality of Care Information Protection Act, 2003.

Our London hospitals are committed to a high standard of privacy procedures for personal health information that is under our custody and control. We are proud of our exemplary performance as custodians of health information and we continually monitor our performance.

The hospital leadership has regular briefings on the status and issues we are dealing with.

—A privacy policy for the two hospitals has been approved based on the 10 fair practices accepted nationally and upon which the federal legislation is built.

—We have a privacy office in place.

—We have an active cross-functional steering committee that works in conjunction with our privacy office to implement our full privacy program and to ensure compliance with the privacy policies and procedures within the hospitals.

—The hospitals have retained independent privacy consultants and legal experts to guide the privacy impact assessment and the implementation of our policies.

—A communication and education plan is underway for all staff, physicians, volunteers and contracted workers at the two hospitals.

—A patient information pamphlet is available for patients to inform them about the personal information and personal health information being collected by the hospital and how that information is being used. Information is also provided to them on how they may contact our privacy office if they have questions or concerns.

—A Web site to share further information with patients and members of the public about the hospitals' policies and practices regarding the collection, use and disclosure of personal health information is also now available.

We have within our technology group two positions responsible for ensuring the security of our electronic health records system and the data.

As many of you are aware, we have gone through significant restructuring in the London hospitals. As a result of restructuring and to be able provide the right information about the right patient at the right time and in the right place, the hospitals have implemented a number of shared services. For example, we have a common medical staff and consolidated laboratory services. The personal information on patients is collected, used, disclosed and retained within the shared services. The hospitals recognize that each organization has both independent and joint obligations with respect to fair information practices.

Our privacy policy is the foundation for other policies and procedures, setting the principles upon which the hospitals collect, use and disclose personal information and personal health information.

As we move to more of a "health system" or integrated approach to providing care, we would recommend that "continuum of care" or "circles of care" be defined to allow health information necessary for quality care to be shared with health care providers across various organizations; for example, providing information to a family physician about a recently discharged patient from the hospital, or, if a patient in a community hospital has a CT scan and the attending physician requests an opinion from a consultant at a major teaching centre such as London, the image can be promptly and securely shared.

The hospitals have had policies and procedures around confidentiality, access and release of information for decades. This new legislation will build on our current practices and will help provide more structure and rigor in the processes for: signing confidentiality statements;



user agreements prior to being granted access to hospital systems and records; release of information; auditing of who has had access to information; and educating and communicating with both our staff and the public.

The approach to patient consent in relationship to the provision of care is significant in allowing our hospitals to work in the most effective and efficient manner.

Express consent for fundraising will be addressed by our foundations separately.

As you are aware, hospitals depend on fundraising for many things, not the least of which are capital projects and purchases to support patient care. Under restructuring, the government requires us to raise 30% of our restructuring or redevelopment costs through fundraising.

As teaching hospitals with affiliated clinics and research organizations, we follow the university research ethics board guidelines for gathering research data. A key issue will be having a consistent approach to the consent process for all of our clinical research.

A patient may refuse consent for sharing of their information for a specific purpose at the affiliated research institute and anticipate that, because of the affiliation between the research institute and the hospitals, their wishes will also be understood at the hospital. The confusion for the researchers and clinical staff is which process takes precedence, the hospital or the research ethics board. We are working with our research community to develop processes and procedures with a goal to ensure that the patient's wishes are always met.

The London hospitals also function as a host institution for such entities as the Ontario joint registry and Cancer Care Ontario. The hospitals are the health information custodian of record. We are aware that these organizations have concerns about their ability to meet their mandate if they have not been identified in their own right as health information custodians. We support such registries and the work that they do, but we do not share their concern in this regard, as we believe the intent of the act is not to compromise their ability to collect and share information as required in carrying out their mandate.

In order to achieve clear accountability of the health information custodian around the management of personal and personal health information under their control and responsibility, and for the effective delivery of patient care, this issue needs further clarification before the legislation is finally enacted. We are committed to working together with our partners to ensure their needs are met.

With respect to the Quality of Care Information Protection Act, the hospitals, and in particular the physicians and clinical staff at the hospitals, want to acknowledge this component of the legislation. They feel strongly that the quality-of-care provisions outlined in the draft legislation enhance and support ongoing education that will significantly contribute to improving the quality of patient care and increase patient safety.

In summary, although there are some areas to clarify and review, the intent of this legislation is commended by our health care providers.

**The Chair:** Thank you. We have six minutes left, so we'll be starting with the government side.

**Mr Peter Fonseca (Mississauga East):** Thank you very much for your presentation. I was hoping that you could expand upon your concerns about including the Ontario joint registry and Cancer Care Ontario as a health information custodian.

**Ms Beattie:** We're not concerned with their status. They work within the hospital walls, and so, Peter, there comes confusion as to whose procedures and processes we follow. I think what we as the hospital feel is that if we set up the hospital as the primary custodian, we're collecting the information. There are provisions in the various sections of the act that then allow us to effectively share back and forth, but if you have two primary people responsible, then there's confusion. In a health care environment, when there's confusion, it just causes possible problems down the way. Let's just get it clear.

**The Chair:** The opposition side.

**Mrs Witmer:** Thank you very much for your presentation. I'd just like to follow up on what Peter has just asked. How would you see us treating the Cardiac Care Network, which has also asked for similar recognition? I notice you didn't mention them, although you did mention the joint registry and Cancer Care Ontario.

1120

**Ms Beattie:** Again, we need to be able to move the information effectively across those organizations. As we look at it, the information that's gathered and maintained within the hospital is the hospital's responsibility. We have to have a way to effectively share that information, and then they need to be able to share that information moving forward.

If we have two primary institutions responsible for that information, then one group says, "Well, I'm following this set of procedures," another says, "I'm following this." Pretty soon the patient's health record and the key information that we need for care is in two places. We want to make sure that the custodianship is in one place, it's firm, and that the provisions in the bill do allow for—I think it's section 38, Judy?—the effective sharing of the information.

**Mrs Witmer:** So then you're saying, really, the hospitals should be the custodian, and you'll ensure that Cancer Care and the Cardiac Care Network get all the information that they need in order to do their job?

**Ms Beattie:** That's correct.

**Ms Martel:** You talked about a continuum of care, circles of care, in essence recommending, I would think, a definition of that in the definition section of the bill. Is that correct?

**Ms Beattie:** I think we need people to understand us. We've gone through restructuring. You don't go to St Joe's or one of the areas of LHSC for end-to-end care in the future. If you have a heart attack, for example, or a stroke, you would go to London Health Sciences for your acute care treatment and then over to Parkwood Hospital for your rehab.



What we want to make sure is that, as we move the information around, we understand the continuum of care that the patient is in, and that we can move that information effectively to all of the caregivers for that patient's continuum, so that there's not, "Well, we can't pass this here or there"—to be able to pass it, if the stroke happened and the patient was at LHSC for their acute piece, to Parkwood for rehab and then to their family physician, so that their care is looked at on an end-to-end basis.

**Ms Martel:** Can I back up? What in the bill right now, then, would suggest to you that you can't do that? Is there a specific provision that you feel blocks your ability to do that?

**Ms Beattie:** I don't think it said that it blocks it, but it doesn't come out and talk specifically about—we call it the continuum of care. In some of the other documentation we've read, it's circles of care—but just to make sure that there's a clear definition so that we know that that's going to be happening.

**Ms Martel:** So your preference would be circle of care or continuum to be defined at the front of the bill. Would there be other changes that would be required, then, to accomplish what you want to do?

**Ms Farrell:** I don't think so. In this piece of legislation, they talk about multiple facilities and the ability to apply for that multiple facilities status.

Within the federal legislation, the term "circles of care" is used in that legislation, and it steps beyond organizations to incorporate all the health care professionals who are providing care to that patient, to the extent that the necessary information for care to be provided can be shared. It would go even beyond our two separate organizations to include the family physician, a community care access group, perhaps nurses who would be providing care in the home, so that the legislation allows that information to be shared freely to the extent necessary to ensure care for the patient.

**The Chair:** Thank you very much. The time is up. Thank you for taking the time to come over and give us your concerns or comments.

#### LONDON MENTAL HEALTH ALLIANCE

**The Chair:** The next group is the London Mental Health Alliance. As you are aware, we have 20 minutes that could be taken by taking the whole 20 minutes, or the balance of the time could be taken amongst the three parties for question time. If you could state your name and title for record purposes.

**Mr Michael Petrenko:** Thank you, Mr Chair. My name is Michael Petrenko. I'm the executive director of the Canadian Mental Health Association, London-Middlesex branch; however, I'm here today to present on behalf of the London Mental Health Alliance, of which I am a co-chair. I have my two colleagues with me, members of the organization who are here to assist with any specific questions that may be here, Marnie Wedlake and Kristin Kumpf.

Thank you for the opportunity to present to you today. I have distributed, for your information, a package of materials. There are three distinct parts to it. There is a covering letter. We can just set that aside. We have the loose sheets which are notes to our presentation today and we have a set of stapled sheets which are supplementary documentation that I will refer to in the presentation.

The London Mental Health Alliance is a close network of services that promotes integration, efficiencies and effectiveness across the various components of the health system. The London Mental Health Alliance works collaboratively with its 21 member agencies and other community services in this regard. We work to create an environment for a comprehensive, coordinated, seamless system of service, education and research, which facilitates client-centred support and intervention toward recovery and wellness. We work with a consensus model of decision-making expressed through monthly alliance meetings and several regular and ad hoc operational working groups.

One project in particular that we have invested in earnestly over the past four years is the common client record. This is an electronic database of client records that is accessible to three mental health agencies currently—the Canadian Mental Health Association, the Western Ontario Therapeutic Community Hostel (WOTCH), and the London Mental Health Crisis Service. This tool gives clients the opportunity to permit these agencies to share portions of their records so that an alteration or addition made to that record at one agency is made immediately available to any of the other agencies sharing that record.

The benefits here are clear. A case manager who sees the client on a regular basis can keep the file current, indicating changes in medications, changes in address, emergency contact person, and so forth. If the client is in crisis at a time when their regular community supports are unavailable, the crisis service can access the most current information, even though they may not have had contact with the client in a long time or, for that matter, ever. The London Mental Health Crisis Service, while community-based and equipped with a mobile response team, also has a satellite location directly within the hospital emergency department. This accessibility allows for medical staff and physicians to have direct and immediate access to health information that will provide records such as medical history and relevant and sensitive information such as that recorded by the community case manager.

Information of this nature can save lives in an emergency and can also facilitate access to help in less imminent situations. A client may file a crisis plan with the crisis service at a time when they are well. This plan might include information that is personal to the client. For example, they might disclose that, during times of crisis, reminding them of their cat will help to calm and ground them. It is suggested that this kind of simple but important information might not otherwise be available



to an emergency room doctor or a crisis response worker and that access to information that is this personal and specific can provide for effective and individualized assistance to a client who is in crisis.

While some people in the community had the foresight to see the advantages of using the CCR, there were also many who were fearful of possible negative ramifications of having personal and sensitive information this readily accessible to the health agencies involved. Many of these fears were based on very real and painful, even life-threatening experiences, where a piece of information was used in an inappropriate way by a health professional. One possible example might be a case where a patient goes to the hospital with chest pains and the attending doctor sees that the client has a history of panic attacks and dismisses the symptom as trivial; the patient is discharged and subsequently suffers a real heart attack.

It is interesting to note that now, after a few years of experience with the common client record—some four to going on five years for us now—some of the people most reticent about the idea in the beginning are now ardent supporters. We have included in this package a number of letters of support asking the government to invest further in this project, and we draw your attention to the fact that consumer-survivors are among those who are now in support.

We feel strongly that any health information protection act needs to support and allow for the ongoing expansion of projects such as this common client record. In this context, we are pleased with most of what has been outlined in the bill. It appears that a great deal of effort has been put forth to strike a delicate balance between restricting access to information in order to protect privacy and facilitating access to information needed to provide good health care.

#### 1130

There are a few issues, however, that we wish to highlight. In the interests of time, we have a number of pieces there. I'll refer to some of them but I will not read all of them so that we have time to discuss some of them.

(1) Number one is a significant one. We expect that some people will be calling for increased regulation and increased rights for a person to restrict access to their health information. We ask that when considering such requests, the committee always balance such statements with a right not to restrict access. For example, it is currently common practice to put an expiry date on a written consent to share information. Some may call for this practice to be legislated. However, this sometimes creates an awkward situation when consent has recently expired and a client currently has questionable capacity to give consent. In the context of shared electronic health records, expiry dates can cause huge problems. We feel it is important that a client's right to opt in to more open communication between health care providers, as may be afforded by electronic health records, be protected.

(2) Subsection 3(7) allows that "Two or more health ... custodians may apply to the minister, in a form approved ... for an order recognizing that they act as a single health

information custodian with respect to all or part of the powers, duties" and so on. Towards the end there I say that currently the situation is that when a client tries to access case management services, the intake worker is not allowed to do a search to see if the person is already on the database. We're not allowed to do that in the current context. What we are hoping is that with this legislation, some attention can be paid to this issue. I look to the very last sentence of this paragraph and a suggestion for your consideration. The use of a health card or health card number as a unique identifier for these purposes would be of tremendous benefit. We are not clear as to whether this legislation allows for the use of the health card number in this way. There are some pieces dealing with the health card number, but not whether it could be used for these kinds of purposes as a unique identifier; in other words, not for billing purposes but as a unique identifier that each one of us holds.

(3) Implied consent, knowledgeable consent and notice of purposes: We are unclear as to whether the conditions for knowledgeable consent apply to this situation. Does a client need the opportunity to see a written notice of purpose or be given a written outline of the purpose if the primary purpose of collection and the only purpose for disclosure is for the provision of health care? It is very important that wherever there are regulations suggesting that information be given or collected in writing, we allow for exceptions where service is provided over the telephone, as is often the case in a crisis service. This is an important piece because more and more we provide services in our communities by way of, for example, crisis services, where the service is done over the phone and there is not an opportunity to give that written disclosure, requesting that consent. So we need to take a look at the ability of a person to give informed, knowledgeable consent via the phone.

(4) Withholding consent to collect, use or disclose information: This is an issue that we are not sure is addressed at all in this legislation. If a client says, "I don't want anything written down about me; I don't give you permission to collect any information about me," does the health information custodian have the right to withhold service, or should they? Can the health care practitioner say, "I have to be able to keep a record for legal purposes to protect myself and in order to give you quality service, so, no, I won't treat you under these circumstances," or would that be seen as gaining consent by way of coercion, which is a violation of 18(1)(d)? We need to take a look at these kinds of issues.

(5) Withdrawal of consent, section 19: This is one area where we recommend a little more regulation or guidance. I'm going to skip right down to (d). Where there is reason to believe that an individual may lack the capacity to give consent subject to sections 21 and 22 of this act, one can also assume that they may lack the capacity to withdraw consent. So we looked at capacity to give consent. We also need to look at capacity to withdraw consent.

I'll skip down to the note at the bottom to illustrate. Note: While some people may be very uncomfortable



with this, it is crucial to find some way to protect the ability of people with mental illness to create statements, such as crisis plans, when they are well, about what sorts of interventions they want to see happen when they are unwell—once again, the capacity to withdraw consent. In the situation where a person is not well and they have already signed and had witnessed a crisis plan which spells out what they want to see happen when they are unwell, does the removal of that consent when they are unwell apply? We need to take a look at that and see that we can have some sort of provision to cover those areas.

I'll skip to number seven.

(7) We strongly support recommendation number (3) of a presentation made to you from the Canadian Mental Health Association, Ontario division, which states, "Ensure that an education and information program is available prior to the implementation of Bill 31, and that it continues on an ongoing basis. Ensure that expert advice is available on a 24-hour-a-day basis to deal with emergency situations." This is critical for crisis and emergency mental health services that operate around the clock. These are complex interpretations and we need the support to be able to call, in the middle of the night if need be, to get clarity and understanding on some of these pieces. We support that recommendation.

(8) Subsection 37(3) causes some concern as it appears to be written with general medical care in mind. First of all, the term "patient" is not identified in the definitions section of this act. This could be a cause for concern as we do not know whether the facility would disclose information related only to in-patients or whether outpatients or day patients are possibly also implicated. The other issue that becomes problematic is the release of information that a patient is in a particular location of the facility which is identified in the community as, for example, a psych ward or a psych wing. The stigma associated with that type of disclosure needs to be thoroughly addressed with respect to an individual's privacy and their express consent for this disclosure. We don't have the answers for that, but please consider that.

(9) The following two case scenarios illustrate potential confusion when other legislation comes into conflict with this Personal Health Information Protection Act. Clarity and training are perhaps solutions. However, we bring these examples forward as a caution for consideration. I won't read the scenarios now. Please do so later.

I'd like to go to the end of this page and note that there is a clear need to understand the specifics of Bill 31 when addressing issues of consent. The above scenarios also suggest a need to be able to access reliable support in those instances when consideration of legislation is complicated by the involvement of more than one act. So back to our recommendation for 24/7 support for interpretations. When you look at these scenarios, you will see that there are instances dealing with the justice system and the penal system, and instances dealing with the children's aid society. We have different pieces of

legislation. Please ensure that there is some coordination and it is made clear to practitioners in the field on how to interpret situations such as these.

In conclusion, although we have identified several areas where the legislation could be improved or clarified for technical reasons, we urge the government to move forward and enact this legislation. It is a tremendous improvement over current circumstances.

As the London Mental Health Alliance, we offer the common client record of which we have spoken, this initiative in our community, as a test site for evaluation and review of practical operational issues with respect to this legislative process. We firmly believe that a fully operational beta test site, if you will, would add great value in identifying practical operational and training issues which could help guide the writing of the rules and regulations that would accompany this legislation.

We would welcome the opportunity to work with the government to apply this legislation toward real-life practice. We have practised in real-life situations for the past five years with this project and we would welcome an effort to work with government to continue in that practice to evolve this piece of legislation.

**The Chair:** We have approximately five minutes left.  
1140

**Mr Ted Arnott (Waterloo-Wellington):** Thank you very much for your presentation. I found it very enlightening. You have given us a lot to think about in terms of the delivery of service in the London area but also across the province. I thought you summed it up very well: The purpose of Bill 31 surely is to attempt to strike a balance "between restricting access to information in order to protect privacy and facilitating access to information needed to provide good health care." Obviously those goals are important ones.

I was wondering about your common client record. As a percentage of all the clients you see in this area, how many clients would routinely access services from the three different agencies? Would it be the majority, or a handful? What would it be?

**Ms Kristin Kumpf:** I don't know the answer to that off the top of my head. Do you have a memory of a number?

**Mr Petrenko:** The total number of clients in the system currently is—

**Ms Kumpf:** —somewhere around 4,000.

**Mr Petrenko:** When we took a look at the services between London Health Sciences and St Joseph's regional mental health care and the services that are covered with these three, it would in fact be a majority, a significant majority.

**Mr Arnott:** I would guess that too. Is there anything in Bill 31 that you feel will limit your ability to properly serve your clients through the common client registry that you've set up?

**Mr Petrenko:** At this point in time we see it as an enabling piece of legislation. Currently, our dilemma here in this community is that you notice the hospitals are not a part of the common client record. The hospitals



currently have form 14s that they must use. They also have legal considerations which, at this point in time, they feel preclude them from participating in a common client record, although there is agreement at the alliance table that all members of the community in the mental health system would like to participate in a common client record of one sort or another.

**Ms Martel:** Thank you for being here. I want to just focus on the disclosure section. You talked about a concern that a facility—obviously a wing in a facility—could identify the patient and why they are there. One of the suggestions we had yesterday was that at the point of admission you could declare as a patient whether or not you wanted that information disclosed. The problem is if you come in at an acute stage and are unable to give that consent. I don't know how we work around that, but you're quite right that we have to figure out some ways to deal with a number of clients.

The section that I want to focus on related to the case scenario that you gave. We heard yesterday and we've heard before that there shouldn't be a reason why health information is being released, for example, of HIV patients who end up in jail. We could have mental health patients who are ending up in custody. What would be the reason why you'd have to release health information in order to determine placement? I haven't been able to sort out why we should be releasing any of that information.

**Ms Marnie Wedlake:** I can speak to that. Part of our role is to provide our clients with a needs assessment process whereby we determine things that would facilitate wellness while they are in the community. We might have a client coming from the detention system who is going to be moving back into the community and that client may also have a mental illness that needs to be addressed. We need to get information about that client and that client's health situation, that comes from the penal institution and comes into our system, so we build a profile and we know what services to provide and what services to link that client with. There actually is a fair bit of information. Our assessment process involves about a five-page intake of information that we collect in order to make sure we're going to point the client in the right direction.

**Ms Martel:** That's if they're being released into—I don't want to use "custody"; I'm not sure if that's the exact word—your care. But what if it's the reverse, that they're in an institution and the institution gets information about their health status? Why would they need that unless there is treatment that is immediately required?

**Mr Petrenko:** For the penal institution to have that information?

**Ms Martel:** Yes. Even in the case of youth custody, the detention centre, unless there was an immediate need for treatment—

**Mr Petrenko:** Only for the health treatment records would they need to go in the reverse flow, back to the penal institution.

**Ms Martel:** So they don't need that information to determine a placement, because you're determining the placement.

**Mr Petrenko:** That's right.

**The Chair:** Could we get your name for the record?

**Ms Wedlake:** It's Marnie Wedlake.

**Mr Khalil Ramal (London-Fanshawe):** Thank you, Michael, for your presentation. I just have a question here about releasing the information. We heard many different opinions, some people with and some against, on the invasion of privacy. In your opinion, which group should determine which information has to be released and how important this information is to the mental health issues?

**Mr Petrenko:** The release of information to whom? To the general public or to the community at large?

**Mr Ramal:** No, to other institutions, to share information in order to have security in our community and also to help the patient himself or herself.

**Mr Petrenko:** We strongly believe that once the patient-client has given informed consent for the sharing of their records, then from custodian to custodian there should be free exchange of that information in support of the person's treatment and care; there should be flexibility with respect to that support and treatment. The ability to access that information should be instantaneous and available to any custodian to whom the individual has given consent to release that information.

For example, in the London Mental Health Alliance we have a common consent form where we list all of the providers that are available in this community. Through an information and knowledge process session with the individual, the person identifies those organizations to whom they wish consent to be released of their own personal information. So some organizations may be excluded because they will not be a part of that treatment service, and others will be included. It's up to the consumer, in an informed way, to identify those organizations to which to release information.

**The Chair:** I'm sorry; our time is up. Thank you very much for taking the time to present your comment to the committee.

**Mr Petrenko:** Thank you. We appreciate the opportunity.

## ONTARIO CHIROPRACTIC ASSOCIATION

**The Chair:** The next group is the Ontario Chiropractic Association, Dr Robert Haig. If you could state your position with the association.

**Dr Bob Haig:** Good morning. It's Dr Bob Haig. I'm the director of government and professional affairs for the Ontario Chiropractic Association. I appreciate this opportunity to come and present to you this morning.

The Ontario Chiropractic Association is pleased to provide comments on this legislation. We believe the government is taking a very significant, positive step forward with the legislation toward protecting personal health information in a manner that supports the delivery of quality care in Ontario.



The Ontario Chiropractic Association represents over 80% of the 3,000 chiropractors practising in Ontario. Regulated by the College of Chiropractors of Ontario under the Chiropractic Act and the Regulated Health Professions Act, chiropractors are the third largest primary contact health profession in Ontario, after physicians and dentists. That means that citizens of Ontario visit a chiropractor directly for care. Chiropractors are one of only five health professions who, because of the training and the legislated ability and the duty to provide a diagnosis, are entitled to use the term "doctor."

Each year more than a million Ontarians visit a chiropractor for health care. That means that a significant number of citizens entrust their personal health information to their chiropractor. We take this trust very seriously, and we have long placed a priority on protecting patient health information.

We are particularly pleased that the government has introduced Bill 31 because of the uncertainty and confusion surrounding the federal Personal Information and Electronic Documents Act and the inadequacies of that legislation in the health care setting. This legislation came into effect on January 1, 2004, and while it may be appropriate for the business and other sectors, it is really not appropriate for the health care sector. PIPEDA includes measures and requirements that have the potential to significantly impede the delivery of health care. At the very least, PIPEDA imposes unnecessary, time-consuming and costly obstacles on the movement of health care information for health care purposes. Our members, chiropractors in Ontario, tell us that PIPEDA is confusing, and the interpretations offered by some advisers suggest that compliance with the requirements of PIPEDA will be labour-intensive and costly for most health care practitioners.

#### 1150

In reviewing Bill 31, we believe that Ontario's health-specific legislation will serve equally the protection of health information and the facilitation of quality health care. Not only does Bill 31 provide for robust requirements for the protection of health information, but it also does so in a manner that facilitates compliance. Ultimately, this is in the best interests of everyone—government, health providers, and, most importantly, the public. So we congratulate the government on bringing forward health-specific privacy legislation and we encourage the rapid adoption and implementation of Bill 31. But it's also true that such important legislation requires extensive review and consultation, so we provide just a few comments at this time.

Section 7 of the act provides that the act shall prevail over all other acts unless specified in the Personal Health Information Protection Act or in the other act. The OCA understands that the Federation of Health Regulatory Colleges of Ontario has expressed concern that the act does not expressly give legislative priority to the RHPA. We fully support the health professions regulatory process in Ontario and we support the efforts to ensure that regulatory colleges are positioned to fulfill their

mandates. So we urge you to give careful consideration to that issue, which was raised primarily by the federation of regulatory colleges.

Section 13 provides for the making of regulations with respect to the handling, transfer and disposal of personal health information records. We believe that specific regulations in that area are better created and handled under the regulatory health colleges and that there should be no regulations under this specific act in order to deal with that. The colleges are well able to—and in many cases already do—have standards for handling these issues. Because there may well be quite reasonable differences between professions, it may be wise to have the colleges actually set that rather than having it under this legislation.

Section 15 provides for the designation of a contact person who is authorized to perform duties on behalf of the health information custodian. Of course, those functions are laid out in section 15. It does not seem clear that the health information custodian is able to designate certain functions, but not all of them, to the contact person. We believe that should be the case. If that's the intent, perhaps that can be made slightly more clear in the legislation.

Section 34 prohibits a health information custodian from charging a fee for the collection, use or disclosure of personal health information except as permitted by regulation. Then subsection 52(10) provides for the prescription of a fee to be charged to an individual for access to personal health information. There should be constraints on fees, but the constraints on fees charged by health professionals for these services, we believe, should be outlined under regulations and policies, again, of the appropriate health profession regulatory college. Our recommendation is really that those provisions in this legislation be removed and that those be established under the regulations and the policies of the regulatory colleges.

Although section 41 of the act provides for the transfer of records of personal health information to the successor of a health information custodian, the act does not appear to expressly provide for the review of records that would need to occur prior to the sale of a private health care practice. Continuity of health care in Ontario remains heavily dependent on the ability of established chiropractors, physicians and other practitioners to transfer their practices to their successors at an appropriate market value. For many, the equity built into the practice is a key component of their retirement plans. Unless the prospective buyers, who are regulated health professionals, have the ability to review the health records, it will not be possible to establish the size and nature of a private health care practice. We recommend that there be an amendment to make an allowance for that specific situation where there is a practice that is being sold or transferred.

Section 64 sets out the powers of the commissioner, and clause (c) provides for the conducting of public information sessions and the provision of information



concerning the act. We strongly believe that the public would be well served if the commissioner is also responsible for educating health care providers. Unless that's done, there is a strong possibility that differences in interpretation can lead to differences in practices across provider groups and among providers themselves.

The experience with PIPEDA has demonstrated that, in the absence of authoritative advice and information about the requirements of the act, different groups make different interpretations. This will result not just in inefficiencies but in different policies being applied, and it will certainly result in confusion for the public. So we recommend that this section of the act be amended to provide for the power of the commissioner to conduct information sessions and provide education to health information custodians.

Last, the Quality of Care Information Protection Act protects from disclosure information provided to quality care committees. This is obviously an important and overdue piece of legislation for Ontario, and we strongly support this.

We wonder why the quality assurance programs established by the regulatory colleges for individual health professionals have not been captured by this act. Clearly, as with the quality of care initiatives referenced in the act, the potential benefits from the quality assurance programs of colleges are limited if the information used by these programs is not protected.

In summary, the Ontario Chiropractic Association commends the government for acting quickly to address the void created by the absence of health-specific privacy laws in Ontario and the uncertainty created by the implementation of PIPEDA. We've made a few suggestions for amendment or clarification, but we strongly urge the timely passage and implementation of the legislation.

Just as importantly, we urge the government to make it a primary role of the privacy commissioner to educate both the public and health care providers about the new legislation.

We look forward to working with the government on this and on other issues of importance in the future.

**The Chair:** Thank you. We have nine minutes left. We'll start with Ms Martel.

**Ms Martel:** Thank you for being here today. Let me begin on page 3, your section on handling of records, where you suggest that the handling, transfer and disposal of personal health information records might be better handled under the colleges. I might agree with you if only the colleges were involved here, but you're talking about a broad range of custodians: hospitals, doctors' offices, nurse practitioners, community health centres, community care access centres. I would think we'd want very common standards set out in terms of both storage, transfer and disposal.

**Dr Haig:** Yes, and I suppose the issue is that, for individual health professionals, there is a regulatory body that has the ability to do that. I think what you're saying is that, for these other groups, there really isn't another body that has the power to do that for them.

**Ms Martel:** True, but I'm also concerned about differences in all of that being done. I don't know if, college by college, the standards are the same. I suspect not, so there'd be maybe differences there.

**Dr Haig:** No, I suspect not as well.

**Ms Martel:** Then you go into the broader health sector, who are also custodians, where you again could have a different set of rules. I would like us to be in a position where we have the clearest, most similar set of rules on all of these issues that everyone has to abide by.

**Dr Haig:** In the Regulated Health Professions Act and in the administration of that, there are template regulations and template standards that the ministry comes up with and gives to the various colleges. So there is a lot of similarity in a lot of circumstances—on policies on conflict of interest, for example.

For those health information custodians who are regulated health professions, if it was given to the college, I think that there would be appropriate standards—the fear is that there would be standards that were not appropriate and not acceptable, or that there wouldn't be standards. I think, with the maturity of the health professions legislation in Ontario and the colleges, for that group of health information custodians, the regulated health professions, we could rely on colleges.

Having said that, I understand exactly what you're saying, that it does make it more difficult for the government or for anyone else to assure the public that everybody has the same standards. I appreciate that.

1200

**Mr Fonseca:** I want to ask how the bill would change the practices that you have in place at the moment to protect patient information. Would it change that much?

**Dr Haig:** I started off by saying that chiropractors understand the need for and work hard to protect private information, but there's no doubt that everybody can do a better job of it. Individual practitioners are going to have to establish policies and guidelines within their offices to make sure that they're compliant.

The reason why we're so supportive of this legislation, as opposed to PIPEDA, is that it was vastly more onerous and complicated and confusing, quite frankly. People would look at that and not know how to do it, whereas we don't think that will be the case here. We think this is implementable and facilitates compliance. So people will have to change some practices; no doubt about that.

**Mrs Maria Van Bommel (Lambton-Kent-Middlesex):** I want to refer to page 4 of your presentation. You talk about transfer of records, and the sale of the private practice is certainly another scenario.

In the practice of chiropractic, what kind of information would you take from your patients? Is it physical health, mental health? Exactly what type of information do you have contained in those records?

**Dr Haig:** Yes, it is largely physical health, generally. I don't know if you're at all familiar with chiropractic, but chiropractors primarily treat musculoskeletal conditions: neck pain, back pain, headaches, extremity injuries, that kind of thing. So the health records that a chiropractor



would have with respect to those patients would be the same health records that a physician might have with respect to a patient with those conditions. Am I answering your question? No? I'm not. OK. Let me try again.

**Ms Martel:** What kind of health information do you have on file?

**Mrs Van Bommel:** What is in the file, like if the patient has HIV or cancer? Does all that show up in the file? If they have a mental health issue, does that show up in the file?

**Dr Haig:** It might, yes. It probably would. If I knew that a patient was seeing a psychologist for a mental health problem, then that would show up in my file. That's not something that I would have to share with a practitioner who was contemplating the purchase of my practice, but for example, if I had a practice that was primarily sports injury-related, as opposed to one which was primarily industrial back pain-related, those sorts of things are significant to someone who's coming in to purchase the practice. So while the person who might be contemplating the purchase of a practice obviously doesn't need access to all of the health information that's there, they need access to some of it.

**Mrs Van Bommel:** So in order to sell the practice, you would have to first go through all the records, separate the irrelevant information so that you could identify the nature of your practice?

**Dr Haig:** Yes. I guess what I'm saying is, it would be nice if there was a way that this could be accomplished without compromising anyone's information, because it is a function that has to happen somehow. The worst scenario is that I have to go to every individual patient and get their permission, which would be difficult.

**The Chair:** We will recess. Thank you very much for coming.

**Dr Haig:** Thank you.

*Interjection.*

**The Chair:** Oh, I thought I heard that. Sorry, the official opposition side.

**Mrs Witmer:** That's OK, Mr Chair.

Thank you very much, Dr Haig, for your presentation. I guess what I see throughout this presentation—and we've certainly heard that from others—is that you would recommend that the RHPA have supremacy over this legislation and that you can feel that much is already covered there. Certainly I could support that.

I guess, at the end of it, you talk about the commissioner and you do feel at the end of the day, for consistency, that that individual, whoever that may be, is in the best position to provide the education and the information sessions. Is that correct?

**Dr Haig:** I recognize that that's asking for a lot. I do recognize that, but the experience with PIPEDA was that the different interpretations were pretty divergent as to what people had or should do in order to comply with it. There should be some official authoritative direction, even if it's not to individual practitioners as much as it might be to, for example, the colleges or the associations.

There should be some authoritative direction on interpretation for individual health practitioners, I think.

**Mrs Witmer:** OK, and that in itself could be fraught with some problems as well. Thank you very much.

**The Chair:** Thank you for your presentation. Now we will recess for an hour. We have to be back in this room by 1:05.

There's been a mistake, a typing error on the agenda. On the second part, the group Strathroy Middlesex will have 20 minutes like the others. So right now, it will be 2:15 instead of 2:35.

**Clerk of the Committee (Ms Tonia Grannum):** It's the last presentation, at 2:35.

**The Chair:** Yes, 2:35 is the last presentation. We'll see you at 1:05.

*The committee recessed from 1206 to 1313.*

## ASSOCIATION OF FUNDRAISING PROFESSIONALS

**The Chair:** I would ask the Association of Fundraising Professionals—they're here already. Good afternoon. Could we have your name and your position with the association?

**Mr Kevin Goldthorp:** My name is Kevin Goldthorp. I'm the associate vice-president, development, for the University of Western Ontario and the president-elect for Sunnybrook and Women's foundation in Toronto.

**The Chair:** Thank you. You have 20 minutes, of which you can take the whole time or leave us some time for a question period at the end. You can start.

**Mr Goldthorp:** Thank you, Mr Chairman and members of the committee. Again, I'm Kevin Goldthorp, and joining me is my colleague Janet Froot, executive director of St Joseph's Health Care of London foundation. Janet is a member of the Association of Healthcare Philanthropy, another fundraising professional association that is national in scope. We hope to make a short presentation and take questions from the committee after our submission. Both Janet and I would be pleased to answer questions during that time.

On behalf of all AFP members in Ontario, I want to extend our appreciation for the opportunity to comment on Bill 31, proposed legislation that we believe will have a profound impact on health care for the people of Ontario.

I'm going to quickly outline the objectives in my presentation. In your handout package is a summary of each of the slides in our presentation, recommendations to the committee, background on AFP, our projected impact of Bill 31 on philanthropy and on health care organizations in the province, support for our recommendations and a quick summary.

We'd like to start with the recommendations and then use the remaining time to provide the context that shapes these recommendations. What I have to say today builds on the Toronto submission made to this committee by Pearl Veenema of AHP, but addresses the full range of organizations, not just hospitals, affected by this bill.



First, we recommend that the committee consider modifications to Bill 31 that would recognize a critical differentiation between health and non-health information for health care patients. We strongly believe that this differentiation, accompanied by differentiated requirements for patient consent, is essential to maintain and expand the role that private giving—philanthropy—plays in supporting an Ontario health care system that is accessible to all and provides the best possible medical treatment to all Ontarians.

We further propose that the bill be amended to explicitly recognize that basic contact information for any individual may be used for fundraising purposes, given that specific conditions are met. We agree with the bill's guidance that personal health information—that is, information related to treatment or which, to a reasonable person, would reveal treatment—should not be disclosed to related fundraising bodies of health information custodians unless express consent has been given by a patient. On that point, we are in accord with the proposed legislation. Further, in the case where express consent has been obtained, we advocate for language that would prohibit a transfer of that information to a third-party organization unless express consent is again obtained from the patient.

However—a differentiating point—in the case of non-health basic contact information, we urge this committee to modify the bill to accept implied consent for use of this information, with expectations that notice of use for non-health basic contact information, with an option to opt out of its use for fundraising, be given to patients at all reasonable opportunities in public displays, in organization newsletters and Web sites, in institution registration forms and in all solicitations.

We do recommend, however, that all such information not be transferred to a third party outside of the affiliated fundraising arm of the collecting institution without express consent. I note that by “affiliated fundraising arm,” we mean the fundraising department in the institution or the separately incorporated foundation dedicated to serving the philanthropic needs of the institution.

In summary, we are urging the differentiation of non-health and health information and believe that implied and express consent can help in the use and the privacy requirements around that information.

On page 5 of our submission, we propose the specific change to wording of the bill in subsection 31(2) to read:

“A health information custodian may collect, use or disclose identifying non-health, basic contact information about an individual for the purpose of fundraising activities, but only if:

“(a) the identifying information relates to an individual's name, address, phone number or e-mail address, and

“(b) the information is used only by the health information custodian or its affiliated fundraising entity or any third-party organization contracted by those two entities for fundraising purposes.”

This recommendation is consistent with the approach suggested by the Information and Privacy Commissioner

of Ontario, Ann Cavoukian, in her submission to this committee on January 27. In it she stated:

“In previous consultations on health information privacy legislation, it became clear that a requirement for express consent would have an adverse impact on a health care organization's ability to raise much-needed funds. We prefer and support a requirement that would allow for an initial contact of the patient by the health care organization for fundraising purposes. At that point, the patient must be offered an opt-out opportunity.”

Let me give you some background on what AFP is. We are a large association of fundraising professionals dedicated to best practices in philanthropy. Our conduct is covered by a code of ethics, first established in 1964, and our adherence to those ethical principles underpins our ability to perform successfully in our profession. We have also joined with our peer organizations to advocate for and endorse a donor's bill of rights and, with the introduction of federal privacy legislation, have adopted standards that indeed exceed the legislation's and the Canadian Standards Association's requirements. That bill of rights is included in your handout package, as well as our code of ethics.

AFP is an organization that represents fundraising professionals from organizations of all sizes and objectives. I happen to represent AFP today, not as a member of a specific group or large institution, although I am a fundraiser in an educational institution and will be in a health care organization.

1320

However, AFP is representative of all grassroots charities, right through to the larger institutions, in our province, and we believe this bill will impact them all. Indeed, we project it will significantly impair our ability to raise funds to support the philanthropic missions of countless health care and health-related organizations in the province and could have the most severe impact on the smallest organizations in the province, those that do not benefit from wide public name recognition or have the volunteer and community relationships to withstand the impact of Bill 31.

I refer to our ethical standards. They are relevant because they expressly address the question of privacy. The full text is in our package, but let me underscore this one point in standards 12 and 14 of the code of ethics. First, “Members shall not disclose privileged or confidential information to unauthorized parties.” We take that commitment very seriously. Second, “Members shall give donors the opportunity to have their names removed from lists that are sold to, rented to, or exchanged with other organizations”—again, a limit on the use of information.

These standards ensure that fundraisers balance the obligations of their organizations to collect and record information with the right of the individuals to privacy. It's the same balance we seek to maintain with our proposed changes to Bill 31.

Allow me to speak for a minute on the projected impact of Bill 31. We believe that the bill, as currently



drafted, will have a significant negative impact on the public policy objectives of this province and of this government. Specifically, philanthropy underpins many of the capital and equipment programs of health care organizations, and impairing our ability to raise funds will impair the ability of the Ontario health care system to care for Ontarians. This extends to actual service delivery where, again, private giving augments or fully funds some services. Bill 31's impact will be felt beyond just direct health care service delivery: It will affect social service organizations providing programs for people with developmental disabilities; it will affect summer camps for children living with ailments or physical disabilities; it will affect cancer support groups. These kinds of programs often depend on philanthropic giving from individuals. That will be impaired by the proposed legislation in Bill 31.

Philanthropy plays an integral role to research, in improving how our system is structured and run, addressing the most significant budget line of our province. Private giving also is critical to support research, the hopes and dreams of all Ontarians to see medical breakthroughs that will improve and save lives. Further, we note that our collective ability to meet the challenges of the Romanow report or respond to a post-SARS world requires not just sustained but enhanced private giving. Yet Bill 31, we project conservatively, will remove between 10% and 30% of annual fundraising revenue for health charities.

Our province's goal of having an accessible and sustainable health care system cannot be met if Bill 31 passes in its present form.

Why do we ask for the information transfer of non-health information and the implied or opt-out consent provisions as our proposed solution, what we see as needed changes in Bill 31? Because we know that people give when they are asked and that initial gifts often lead to a much more significant relationship that results in much more substantial giving to charities. We know that donors want to be approached respectfully, in a personal manner and with an appropriate request, and we know that donors want to give where they have some connection and in a manner that seems appropriate to that connection.

As you've heard previously at other submissions to this committee, research in Toronto has shown that patients do not want to make decisions during the actual treatment or health care intervention. They want to focus on care, and will address the issues of giving separately, at a separate time.

As well, we strongly believe that there should be absolutely no perception of a link between care and giving. We know that there is no such connection. Let me underscore this point. However, we want to ensure that there is no perception of such a connection ever existing. It should not and must not happen.

Other research has shown that caregivers believe that any consent collection done by them will interfere with the care process and an already overburdened health system. We concur and argue that such consent should be

implied with multiple interventions to inform, educate and allow potential donors to opt out, particularly in the solicitation process itself.

Finally, we make the point that express consent proposals disadvantage health fundraising at the very time when the province needs increased health fundraising to meet its care and fiscal goals.

Let me summarize by giving the three points I really want to leave with you: that philanthropy is critical to health care in Ontario; that fundraising is done in a respectful, ethical context, allowing health care recipients to opt out at any time in the process; and that Bill 31 can be easily amended to differentiate among types of patient information and consent requirements, meeting both privacy objectives and health care needs.

I thank the committee most sincerely for the opportunity to present our submission on behalf of the Association of Fundraising Professionals, and now I ask for any questions you may have of either me or Janet.

**The Chair:** Thank you. We have six minutes left, two for each party.

**Mr Leal:** If I could just go back to page 4, where we look at the projected impact of Bill 31: You indicate in here that health philanthropy in Canada raises as \$1.5 billion to \$2 billion annually. Do you have the Ontario numbers so I could find out what the impact would be right here in Ontario?

**Ms Janet Frood:** I can respond with regard to health care philanthropy in terms of Ontario and through the membership of AHP: \$500 million is raised annually.

**Mr Goldthorp:** Mr Chairman, if I could supplement the answer, it's \$500 million through hospital foundations in the province. That does not count the other millions of dollars through other non-hospital health care foundations.

**Mr Leal:** So that's strictly hospitals.

**Ms Frood:** It's from 225 public hospitals.

**Mr Leal:** So I can just do the quick calculation of the 30% of that, which might be siphoned off with this legislation.

**Mr Goldthorp:** Yes; \$150 million.

**Mr Fonseca:** Thank you very much for your presentation. Would you not agree that providing a patient list to a foundation is personal health information? After all, it's linking the individual to the hospital or to the organization.

**Mr Goldthorp:** We actually would argue that it's not health information; it's user information. We know that the individual is a user of the hospital. We have no knowledge whatsoever of the type of treatment or the reason for attending the hospital. It goes back to the point of wanting to approach someone on a point of connection. If we don't know that the person is a user of the hospital, then there's no connection between us and the user. We're simply asking for the ability to have an attempt to establish a relationship and have multiple points of opt-out where that potential donor or user can tell us and we will respect the request not to engage in any fundraising conversation.

**Mr Fonseca:** But there may be a case where you have an individual who doesn't want family members to know that they've been at a hospital or another institution, and if they didn't opt out, by just not knowing the process or they weren't touched by it, and they start receiving that information, they may feel that information has gotten out.

**Mr Goldthorp:** I'll let Janet respond first. I will respond separately.

**Ms Frood:** I think that is a valid concern, and it is one that for years—because we have had the opportunity to connect with patients, we in the many health care organizations already have a practice in terms of certain sensitive patient groups that we exclude. For instance, we do not contact psychiatric patients and we do go through a process of identifying other vulnerable or deemed-to-be-sensitive scenarios. So there is already a high level of exclusion that happens, and that is done in consultation with our hospital organizations that we serve. I can say from experience, having worked in the health care sector since 1994, that the level of complaints and negative feedback is very nominal. In fact, the AHP numbers quote a 1% to 2% complaint rate from 10,000 to 20,000 people contacted. I would say the converse is that people often are very open and very thankful for the opportunity to demonstrate that they are grateful for the care received.

**The Chair:** I will now go to the official opposition.

**Mrs Witmer:** Thank you very much for your presentation. I would agree with you: I think people really are quite grateful for the opportunity to support the hospital. The other thing that I find happens is the communication with people in the community as to what is going on at the hospital, some of the new initiatives that are going to be undertaken, some of the successes they've enjoyed. So it's really a form of additional communication which I think is really important.

1330

We've heard from others, and I'm certainly very supportive, as is our party, on making some amendments here. You're suggesting that it could remove 10% to 30%. I think we've heard from other presenters that it could be far more than this.

**Ms Frood:** I think it's a domino, though, in terms of that's just from a first gift. What we see is that a \$100 donor can in their lifetime turn into a donor of a planned gift or a bequest which is \$1 million or more. Our other concern is that at a point in time when the need for philanthropy to support our health care missions is increasing, to minimize the opportunity to develop the relationships with the very people who are being served, there's a disconnect there.

**Mrs Witmer:** Yes. That's right.

**Mr Goldthorp:** If I may, our presentation was deliberately conservative. Our objectives were not to dramatically overstate the case. It is very clear to us that 10% to 30% is a minimum. As Janet referred, it does not count into what we call the major gift of large donations

coming in after a relationship is developed that will never be found because of this legislation.

**Mrs Witmer:** Exactly, and we've heard numbers that would indicate that the majority of the money that's raised would no longer be available once this trend started.

Anyway, I appreciate your presentation. I think there is recognition that certainly the government doesn't have all the money, and this serves as more than just fund-raising. I think it serves as a vehicle for communication as well, which I think is just as important.

**Ms Martel:** Thank you for being here today. We've heard similar presentations and I'm sympathetic to the need for change. Something just struck me that should have a long time ago. If we do the amendments, and what the foundations are essentially given are name, address, telephone number and e-mail address, how do you take the next step of taking off your list people who have sensitive treatment concerns?

**Ms Frood:** That happens at the hospitals. The hospital does that now.

**Ms Martel:** Even before—

**Ms Frood:** It's a precursor, so we only receive information that is deemed to be appropriate for us. I know in St Joseph's Health Care, London, a process of review is—we're looking at, what are we already excluding, what else should we consider doing, given the heightened awareness? I think we're getting to a verification point; we've already been doing quite a good job, so we just don't even get certain information at the front end.

**Ms Martel:** The hospital is doing it themselves before that is ever transmitted.

**Ms Frood:** Yes. We also have other mechanisms, because foundations also, over the course of having relationships—we may receive from our own donors an indication to no longer solicit. So we also have another layer of exclusion that happens and it is a constantly updated process.

**Ms Martel:** So your suggestion is that we add in the definition section, under section 4—we've got a definition of what personal health information is and you're suggesting we should have a definition for—

**Mr Goldthorp:** Personal non-health information.

**Ms Martel:** —personal non-health information, and we could put in the legislation or in regulations that that would include name, telephone number, e-mail address and address so it's very clear what that means.

**Ms Frood:** Yes.

**Mr Goldthorp:** Correct.

**Ms Martel:** Then that would link directly to the amendment for 31(2), where you reference non-health information. It would have been defined somewhere else.

**Ms Frood:** Yes. And those amendments would be very consistent with what most hospital foundations are already doing anyway. It's really reflective of what is current practice, which has been working well.

**Ms Martel:** Thank you. I appreciate that.



**The Chair:** Thank you very much for your presentation. I appreciate that you took the time to come here to tell us about your concerns about this bill.

**Ms Frood:** One final comment in terms of the overall support: Both associations absolutely believe that this is the right thing, and for those of us in the health care sector to see legislation specific to health information is more meaningful than the global PIPEDA. So we see it as a very positive thing.

#### CANADIAN MENTAL HEALTH ASSOCIATION, ELGIN BRANCH

**The Chair:** Now we'll call on the Canadian Mental Health Association, Elgin county branch. On behalf of the standing committee on general government I'd like to welcome you and thank you for taking the time to come up with your presentation. You have 20 minutes, and you can either take the whole 20 minutes or leave some time at the end for questions from the three parties.

**Ms Heather De Bruyn:** I'm Heather De Bruyn. I'm with the Canadian Mental Health Association, Elgin branch. I'm the executive director there.

I wanted to start by giving you an overview of our association and then go through our support and then what we would see as some positive changes in the proposed bill.

The Canadian Mental Health Association, Elgin branch, is an incorporated, registered, non-profit charitable organization chartered in 1961. Throughout the province we have 33 local branches providing a range of services, as well as our provincial office. Our particular branch provides a seven-bed supportive residential program, 24 geared-to-income rental apartments in our independent housing program, a homelessness program that provides 24 apartments across the county, an intensive case management program that provides 24/7 support, a sessional fee program for psychological assessment, a rural community support program providing culturally specific outreach to our Low-German-speaking Mennonite population, a three-bed crisis/safe bed program, individual and group supportive therapy and three activity centres across the county.

I just wanted to mention that we have such a wide range of services and different locations because it would impact on the implementation of the bill.

The goal of these services is to support individuals in their recovery from mental illness. Our agency's mission is to contribute to an integrated mental health system by providing community-based mental health services and to optimize mental well-being through education, advocacy, research and support services.

In recent years, in response to client needs, our branch has developed a mental health network that includes core and associate members from across the county. We have been working with other service providers in our community to streamline access to services through a common assessment tool and have been improving the integration of services through innovative alliances, networks and partnerships. I believe you would have

heard more of that with regard to London's position this morning.

Information sharing is an integral part of these strategies. New approaches include developing common client records to be shared by the different agencies or services with which a client may be involved, to avoid duplication and to ensure that each agency working with the client has the most up-to-date information. It becomes incredibly important, especially when dealing with crises.

As more and more people with serious mental illness are able to live in their own community with the support of services such as are provided by our branch, it is even more important that hospitals and communities work well together.

The Canadian Mental Health Association, Elgin branch, has a long-standing interest in the protection of personal health information. We know first hand the stigma and discrimination that people with mental illness and their families continue to face in all aspects of life. The public perception of people with mental illness, a serious and sometimes fatal disease, is often based on stereotypes that portray the person as violent, incapable and unstable. The fear of stigma interferes with individuals accessing the services they need when they need them.

Then I have the example from 1977, when there was the creation of the commission of inquiry into the confidentiality of health information. Incredibly enough, it was something we were still dealing with last month, when it was discovered that Parliament required applicants to disclose whether or not they had been treated for a mental illness. Fortunately, those things were dealt with very quickly, but it still has the underlying perception of mental illness that concerns us with regard to the level of stigma.

This submission reflects our agency's strong belief that individuals have a right to maintain the privacy of their health information and to control its collection, use and disclosure. At the same time, as service providers, we are also aware that there are limited circumstances when disclosing information may be essential to save someone's life.

We strongly support the bill and we urge the government to enact it as soon as possible. Although we identify some concerns and would make some recommendations designed to improve the legislation, this bill has incorporated many of the concerns that we have identified in previous versions of health information legislation and policy. It also achieves several of the goals that we identified as essential components of effective legislation.

The primary goal of the legislation should be the protection of personal health information, providing an individual with access to their own information and the right to correct that information.

The legislation also should recognize limited circumstances in which information could be collected, used or disclosed without consent.

The legislation should facilitate the sharing of information to improve health care, while still respecting the individual's rights.



1340

The Information and Privacy Commissioner should be responsible for the legislation. As an independent body, the commission has the expertise and experience necessary to carry out this important role.

The legislation should be clear and easy to understand and use, and it should not create an unnecessary administrative burden.

This legislation goes a long way to achieving these goals. The following comments and recommendations are intended to strengthen the legislation, consistent with these goals.

Our review of the legislation for this submission was guided by recommendations from our provincial office, based on feedback of the experience at the local branches, and in particular on the barriers that currently exist to providing effective health care, whether those sections of the legislation which permit the collection, use or disclosure of information without consent are limited and clear, and whether there is enough guidance in the legislation or the regulatory powers so that individuals understand and can assert their rights and so that providers can effectively implement the legislation.

Overall, the recommendations fall into six categories: regulation-making authority; scope; accountability and implementation; consent; capacity and substitute decision-making; and disclosure of information.

The regulation-making authority under this legislation is expansive and affects every aspect of the legislation. In some regards, it is overly broad and would, in our opinion, undermine the legislative intent. There are also some gaps in the regulation-making authority that we would recommend be added.

Overall, providing flexibility through regulation is a necessity for this type of legislation, which is applicable to a wide range of persons, from a very small organization to huge institutions with thousands of employees. Our concern is that the ability to exempt persons or classes of persons from the definition of "health information custodian" has the potential to undermine the comprehensive nature of the legislation and return to the current situation in which there is a patchwork of legislation or, as in the case of community mental health, no legislation at all.

Similarly, by excluding information from the definition of "personal health information," the potential exists for sensitive information to have no protection at all.

The regulation-making process does provide some protection. By requiring public consultation on regulations, with limited exceptions, it allows the public to raise concerns if proposed regulations undermine the legislation. In order to strengthen the legislation and further protect against its erosion through regulation, we would also recommend that the regulation-making power specifically refer to the purpose of the legislation set out in the preamble. In doing so, it provides a measure against which to judge whether a regulation is consistent with the purpose and intent of the legislation or whether it would weaken the protection provided. This approach

would balance the expansive regulation-making power and hopefully retain the core values of the legislation.

The recommendation would be that section 71 be amended to require that the regulations must be consistent with the purpose of the legislation and result in the strengthening of the legislation. Regulations which reduce the protection of an individual's information would not be valid.

I can go through and I can keep reading these things, but there are a number of other pieces and I know that Ontario division also presented these amendments, so you will have heard them. I wanted to give you a local perspective on examples of things in a rural community around sharing information that they wouldn't want to have impeded because of the legislation.

With regard to the unnecessary administrative burden, I also wanted to remind folks around the table that for community mental health agencies there has been no base budget increase since 1992. As you can see from the difference in costs of services, we prioritize the services for our consumers and therefore there is an erosion of some of the administrative duties, so we would not want to unduly burden in that area.

We are the only community mental health agency in Elgin county, so there are times when we are asked to do things or assist people that wouldn't necessarily come under mental health services. Because sometimes people don't know where to go and they see the sign in front of your door, you are it. For example, we receive calls sometimes from Ontario Works when they have somebody in their office who is displaying mental health problems and is unable to fill out the mandatory requirements for the paperwork that is necessary for them. They have verbal permission from the client to contact our office, and we would be given the name and phone number to do assertive community outreach—to go back to that individual and offer them support in filling out the forms. It's not necessarily something that has been covered because, again, it's informal. It's not necessarily part of our mandate, but in a small community, the people who are mobile and can assist are needed in all different kinds of areas.

Another example would be that sometimes the police will pick up somebody following complaints of bizarre behaviour. Unable to get information from the individual but not wanting to lay charges, they may come by our office and say, "Do you recognize this person in the car?" In one example, the officer asked me and I looked and said, "No, I don't recognize that person. Did you think of asking her for her identification?" He said, "No, I guess I can do that." So he went, and then he came back and, because I'm a health agency, I could then call our local psychiatric hospital and ask if somebody was missing from one of the wards, which we did find out, and they were able to transport her back to where she needed to be without unduly burdening the legal system or charging her with any sort of misdemeanour.

Other times we have been asked to go down and identify people being held in the cells at the police station.



Again, a similar experience: Somebody is picked up for bizarre behaviour and is not able to speak for themselves too readily, and they're not willing to share information such as their identification with the police. But if they see a community support worker, then sometimes they are willing to say, "This is who I am, and this is my contact person" or "this is my worker."

On a daily basis, we call our local psychiatric hospital and ask if any of our clients have been admitted, because we have 470 clients across the county. Some live independently, and some live in remote areas. If we do not receive information about whether or not they need our assistance, then sometimes for them to move back to their home or if they have pets that need taking care or their medication has been left behind at home, they need to have that linkage for their worker to be able to pick that up, or sometimes take clothes or shoes so that when they actually are ready to go home, there is not a disruption in the services they get.

When clients come in to our agency, we use form 14 and we really do strive to have the highest regard for confidentiality because of the stigma, and certainly do, as we work with them, talk to them about what things we would share, such as if we called the psychiatric hospital, or would they want us to check on those kinds of things. But when people are actually going into a facility in a state of crisis, they are not always able to give informed consent.

So it has to be a strategy that we work with individuals ahead of time, before the crisis. In fact, sometimes when people go into the crisis unit, if they have had some sort of issue with family, they may state quite vehemently that they do not want their family to know about the situation. So you have to modify the goal, because it could have been in their crisis plan that you always notify their mother when they go into the hospital, and yet this particular admission is because of some clandestine fight they have had with their mother and they don't want her to know.

Those are the things—those are the pieces and the respect around confidentiality that we have in existence, but still try to maximize what we do in the best interests of the client. In a small community, you get called on for all kinds of reasons. The United Way received a number of calls because we had a young fellow living in a dumpster. You have to keep in mind that in Elgin—I'm not saying we don't have homeless people, but they are well hidden because of the rural nature. They didn't know what to do. They don't have outreach workers, so they called our agency and said, "Can you go over—this young fellow is there—and see if he needs some assistance?" So we would go over and deal with the situation and make the appropriate referrals, but not necessarily one to regional mental health care and not necessarily one to the crisis unit, because the mental health issue may not be a serious mental illness that we or they would deal with.

I just wanted to bring more of the local perspective to the presentation you received from our Ontario division last week.

1350

**The Chair:** Thank you. We have six minutes left. The official opposition.

**Mrs Witmer:** Thank you very much for your submission and also for speaking to how you conduct your business and the interaction you have with people in your community and how that might be quite different than in an urban setting. You've made some recommendations for changes within this legislation. Where do you think it is most critical for your association that changes be made?

**Ms De Bruyn:** If you look on the last couple of pages, there's a summary of the recommendations. I guess what I wanted to make loud and clear is that when dealing with mental health issues, sometimes it is more difficult to determine the level of urgency needed with regard to disclosing information without consent. It's not as simple as somebody going into a general hospital emerg and they're unconscious. Then you can say, "OK, they cannot consent." If they go in with a broken arm, it's pretty straightforward that they can consent. So I think the biggest part—every mental illness is different, so it's not even one fix for everybody; it certainly depends on the situation and it has to be looked at individually. So it's that flexibility around giving information in the client's best interest without consent.

**Mrs Witmer:** And it's a little bit murky to be writing legislation or regulations that somehow capture that need for flexibility.

**Ms De Bruyn:** Yes it is. I can already tell you from the peer support group that we have locally—their executive on their board are also consumers, and one of them went into the hospital since January. When they called to see how he was, because he has no workers and no mental health formal supports, the initial response from regional mental health care was, "I'm sorry, we're not allowed to divulge that information." So they were not there. He has no family locally; he's high-functioning, so he only deals with the peer support group. That is a negative impact on people's understanding of how to implement the legislation. I still think there needs to be a lot of education on how you use the legislation. For larger institutions, even with form 14s in the past, it sometimes is an exclusionary piece as opposed to an inclusionary piece.

**The Chair:** It's time for Ms Martel.

**Ms Martel:** Thank you for coming today. I may go over this again, and I'm sorry—I'm struggling, I think, with the provision that says a facility "can disclose." If you call, information can be disclosed, and we're very conscious that the identification of a particular wing will certainly disclose information that people may not want.

One suggestion was that if people come in and can state their preference on admission, that they do that. But you would have a number of clients in an acute episode who would be unable to do that on admission. Do you have some ideas about what we could do, under that circumstance, if they're not able to give express consent, that it be known that they are actually there?



**Ms De Bruyn:** What we do with our individuals at this point in time is create a crisis plan ahead of time, so that you have permission ahead of time for the release of certain pieces of information. But it does become murky and it does become difficult, and it is not the same as other pieces of health in that even sometimes when our consumers are presenting well, it isn't necessarily the most logical presentation that they're giving. So when they're going into a crisis unit—and you will know this from things you have read in the newspaper. Sometimes they could be in a crisis, go into a crisis unit, present very well, be released, but not be well. So there still is a glitch with regard to assessing whether or not they are capable of giving consent.

**Ms Martel:** In the same section around disclosure, we also heard concerns about a health care custodian contacting a relative or friend of the individual if the individual is injured, incapacitated or ill, and a concern was raised there that family or friends may not know of a mental illness or HIV/AIDS, for example. One of the suggestions that came forward in previous presentations was that you deal with the substitute decision-maker. That might be OK if you have one. I take it that perhaps a number of patients who have mental illness would not have a substitute decision-maker, so you couldn't use that as an alternative.

**Ms De Bruyn:** In our area, a number of them would not have a substitute decision-maker, because when they are doing well they are doing extremely well and do not need one. If they have community supports, whether it be peer support or case management or any of the outreach teams from the hospital, sometimes that would be the extent they would have. I would think the substitute decision-maker would be in place for people who, even when they are doing well, are not achieving the same levels as their counterparts.

**Mrs Van Bommel:** Thank you for coming in today. The bill is about protecting the privacy of individuals and their health information, and you referred to the rural community. Could you elaborate for the committee about the rural culture and the difficulty of maintaining privacy, even in terms of being seen in certain buildings, walking through certain doors, having certain people visit with you?

**Ms De Bruyn:** Certainly. In a rural community, I am known by the vehicle I drive: "Oh, are you the one who drives such-and-such a vehicle?" So if I went to visit somebody at their home—I'm already known. People know where I work. They know the vehicle you drive, so if you're actually doing home visits, people know that you're a mental health worker going into somebody's home.

The nice thing about having—we have partners across the county. In the west end of the county we are out of the community health centre, so people can go into the health centre without anybody necessarily knowing that they're going for mental health supports. Some people choose to do that for anonymity reasons; other people are fine with having you go to their home. Transportation,

though, does remain an issue. Some people are reduced in the choices they can make because of the transportation.

We certainly strive to keep neutral settings for our workers to work out of. We have activity centres around that aren't necessarily targeted as, say, mental health agencies, and we have partnering agencies that we have offices out of so people can have some anonymity. We will meet individuals wherever they would like to meet, so if that happens to be the doughnut shop and then go from there, that's the way the business is done. It's all done individually with regard to the client's wishes, to maintain that.

The difficulty in a rural area is that if you live there and you work there, you have no anonymity. Everybody knows. And everybody knows, when you're going to somebody's house, exactly why you're there.

**The Chair:** Thank you for giving us the opportunity to hear about your concerns and taking the time to come down today.

#### STRATHROY MIDDLESEX GENERAL HOSPITAL FOUNDATION

#### FOUR COUNTIES HEALTH SERVICES FOUNDATION

#### ASSOCIATION FOR HEALTHCARE PHILANTHROPY

**The Chair:** The next group is the Strathroy Middlesex General Hospital Foundation. On behalf of the standing committee on general government, I would like to welcome you to this hearing. Would you tell us your name and title?

**Ms Susan McLean:** My name is Susan McLean. I am the chief executive officer of the Strathroy Middlesex General Hospital Foundation. I'm speaking to you today on behalf of the two hospital foundations that form the Middlesex Hospital Alliance. I do have a presentation that I'd like to present to you as well. It will take us just a short minute to get it up and running. I certainly appreciate this opportunity to have the chance to provide some information on behalf of community hospitals in Ontario.

I'll just go through and tell you a bit about the hospital alliance that I represent and also the greater partnership that I have with the Association for Healthcare Philanthropy. As I said, I am speaking on behalf of the two hospital foundations of the Middlesex Hospital Alliance and also as a member of the Association for Healthcare Philanthropy.

#### 1400

The Middlesex Hospital Alliance was formed three years ago and is an equal partnership between two Middlesex county hospitals—actually, the only rural hospitals in Middlesex county—Four Counties Health Services and Strathroy Middlesex General Hospital. I'm also here today as a representative from the Association for Healthcare Philanthropy, a group of health care fundraising executives and health care institutions that are



dedicated to the advancement of philanthropy in Ontario and Canada.

Do you want me to wait until this gets up and going or would you like me to continue?

**The Chair:** You could proceed, because we only have 20 minutes, and if you take the whole 20 minutes, there won't be any time for questions.

**Ms McLean:** Just following along in your notes, last year in Ontario the Association for Healthcare Philanthropy members raised over \$500 million for the Ontario hospitals that they support.

I know you've received a presentation from my colleagues the Association for Healthcare Philanthropy on January 27, I believe, in Toronto. It is my hope that in addition to reinforcing the very valid comments they would have and the concerns regarding Bill 31, I'd like to give you an insight into the impact that the implementation of this bill, as it stands now, will have on community hospitals and their supporting foundations.

I would also like to introduce to you my colleague, Ed Wheatley, who has been working with our foundation for a number of years and was actually instrumental in the program design and transfer of data for our first grateful patient mailer, now more than three years ago. Many hospitals will refer to patient solicitation as a grateful patient mailer and, as many of you would understand, most of them are very grateful for the services they have received in our hospitals.

Funding the growing cost of health care continues to be a challenge to governments, hospitals and the foundations that support them. Not only is each hospital and its community responsible for funding the annual cost of new and replacement equipment, but also, as much of our hospital infrastructure becomes outdated, which we see all over the province at this time, the cost of capital projects.

Presently, the ministry caps capital project costs at between 50% and 70% of the total expenditure, therefore requiring communities to raise the balance. In my particular case, working at this right now, we face a need to raise \$7.5 million within our community of 32,000 persons. The majority, other than the town of Strathroy, are rural-based. This is a sizable task when combined also with the need annually to raise between half a million dollars and \$1 million to cover the annual capital equipment cost from the same community.

I want to talk a little bit about the relationship that a community hospital enjoys with its citizens. I can speak to you about the tremendous source of pride that residents in the community have for their hospital, for the institution that provides them with the care that really is their day-to-day needs. It might be looking after your grandmother's stroke or it might be your child's appendicitis. It can be anything that is not needed in the tertiary hospital setting. It has been my experience, and I believe it could be confirmed by any one of my colleagues, that there is a strong sense of pride and ownership in their local hospitals. It is not considered an intrusion, or offensive, when the community hospital asks for support.

All hospitals approach individuals and organizations to raise funds for a variety of needs. These needs include building and renovation projects, as we are in right now; patient care equipment needs; funding for emerging technologies, which we can barely keep ahead of; and education, recruitment and retention of medical professionals. I doubt that I have to tell this group how important it is to be able to maintain physicians and other medical professionals in the hospitals already in place.

One of the key differences between fundraising in urban areas and community hospitals is the number of development opportunities that are readily available, whereas the list, as you can see, of potential programs available in large centres is far larger than that available for community hospitals. When you look at our opportunities, the plans that we can cost-effectively manage are almost half. So we need to look at programs that will provide us basically the most bang for the buck without using any other kind of terminology.

Hospital foundations are very effective at raising funds, and we do this in every community across Ontario, but all of us face a limited pool of potential donors. In the case of Strathroy, we are in the midst of the largest fundraising campaign ever launched in our community. Presently, we have raised over \$6.5 million toward a \$7.5-million goal, funding a \$15-million project funded at 50% by the Ministry of Health and Long-Term Care. We're very grateful for this opportunity to build a new addition to our hospital, but also very concerned about the funding that's available, particularly when you look at the size of the community.

As is traditional, we have received tremendous support from both individuals and the corporate community, but the remaining \$1 million is still a question mark. We must continue to expand our donor base to reach this goal.

Central to our efforts are grateful patients and the ability of hospital fundraisers in Ontario to reach out to these patients and their families in the hope they will provide a gift. Once established, hospitals need the ability to cultivate and maintain these relationships, and in most cases donors appreciate the continuing opportunities we provide to them for both education and ongoing solicitation.

Virtually every health care institution in the province of Ontario now is currently contacting patients as a primary source of new donors. Grateful patients and their families create the single largest pool of health care supporters available.

Barriers to the relationship development, as could be put in place with the draft legislation, will be detrimental to the philanthropic sector, resulting in significant and increased administrative costs, greater costs per dollar raised and lower net funding for health care programs in the end.

Hospital users, our patients, are more than pleased to assist their hospital. As you can see in the presentation, our most recent patient mailer, which accounted for a whopping 15% of our annual direct mail income, tells the story of one of our patients.



The appeal was directed to others who used the emergency services as well. Patients feel a great sense of gratitude for the care they've received and want to help when asked. It should be noted that in our case, the response to this patient-focused mailer out-performed according to industry standards. This is yet another confirmation to us that patients want to have the opportunity to contribute to their hospitals.

I'm going to provide you with three or four local examples gathered from my colleagues throughout Ontario of what patient mailers and grateful patient programs mean to these hospitals.

One example: Last week, a couple visited my office and said they had recently moved to Milton. Mr X had used our emergency department and had received a grateful patient solicitation letter. The gentleman had suffered a heart attack and was stabilized at Milton District Hospital emergency before being transferred to a Toronto hospital. He wanted to express his gratitude by donating \$10,000.

Another example: A young lad was struck by a car while crossing county road 14 about four years back. He was brought here to Four Counties, stabilized and airlifted to Children's Hospital of Western Ontario, one of our partners. Rapid treatment was credited with saving him from severe brain damage. When we were in our Helipad campaign of 2003, the grandparents of the young man made a generous donation to the campaign in his honour.

This is my particular example: Memorial donations represent a large portion of gifts made to community hospitals. Grieving families feel that by naming their hospital as a recipient of memorial contributions, it's their way of saying thank you for the care a loved one has received.

Hospital foundations will no longer be able to have access to this information, allowing us to send a note of appreciation to the next of kin—not only a matter of common courtesy, but the right thing to do. There's another example that's not in your handout. This is from a northern Ontario community hospital that last year sent out a combined mailing to lapsed donors and patients to bring in about \$12,000 gross revenue. This year it sent only to lapsed donors and the revenue is only at \$5,000 so far.

**1410**

When we talk about grateful patient programs and the return on investment, I want to talk to you a bit about the cost of fundraising. I'm sure many of you have been involved in your hospitals. The cost of fundraising is of constant concern to the community, professional development staff and to our volunteer boards.

Donor acquisition is the most expensive form of fundraising there is. In order to ensure that administrative costs are contained within hospital foundations, community hospitals must continue to seek new donors who are acquired in the most cost-effective manner possible.

Grateful patients represent one of the most cost-effective methods available. They are already interested

and involved and most likely will support a request from the hospital when the request is sent.

I wanted to also provide you with a bit of accountability on hospital foundations. This is taken from the Canadian Centre for Philanthropy's recent publication on charitable fundraising in Canada: "Hospital boards are more frequently reported to be involved in almost all evaluation activities than are the boards of other types of charities." What this, I'm hoping, is telling you is that we have to make sure our costs are reasonable and in line and that hospital boards are very diligent in ensuring that.

I wanted to give you some examples of what our grateful patient revenue actually will fund for us this year and what could happen. As I mentioned earlier, 15% of SMGH Foundation's annual income is derived from our grateful patient program. The numbers are similar throughout community hospitals in Ontario. Translated into patient care equipment, this represents the ability or the inability to purchase three cardiac monitors, eight patient stretchers, 10 defibrillators, or perhaps two years' support, our educational bursary fund, which assists in the ongoing training of not only physicians, but medical professional staff as well.

How do hospitals and their foundations make the choices as to what is funded and what is not? Based on SMGH figures, \$75 million generated by grateful patient programs in Ontario are at risk. I ask you, as revenue from grateful patients declines and hospital needs continue to rise, is the provincial government prepared to fund the shortfall?

I would also like to offer you an alternative to the present form of Bill 31. I have two options, both of which are supported through the Association of Healthcare Philanthropy in Canada and its members at large. The first is the option to offer implied consent through notice, with both hospitals and foundations handling the opt-out process. The second would be implied consent through notice, with hospitals only handling the opt-out process.

To summarize—I am going to hit on some key points that my colleagues have already addressed with you so I'm not going to take a lot of your time here—hospital foundations cannot support an express consent requirement for health care fundraising for the following five reasons: the potential negative impact on patient care; privacy expectations on the part of Ontario patients are inconsistent with the express consent requirement; the potential loss of revenue to Ontario hospitals comes at a critical time in healthcare reform; over the next two years, hospitals will depend increasingly on their foundations to fund research in communicable diseases and new infection prevention and control measures in light of the severe effects of SARS; and finally, the discrepancy in consent requirements in Bill 31, as it is currently written, would create different privacy rules between Ontario health care fundraisers and their charitable counterparts in other sectors. This is an unfair requirement to hospital fundraisers.

I thank you for your time today and, once again, for the opportunity to present the feelings of community hospitals and of the Middlesex Hospital Alliance.



I'm happy to try to answer any questions you may have as well.

**The Chair:** We have one minute left, and I will give this time to Ms Martel.

**Ms Martel:** Thank you for your presentation today. We've heard a lot about fundraising, as you can well imagine. Here's my concern. There has been some suggestion that perhaps we can get express consent from people upon admission. I have two concerns with that. I suspect a number of people come to your hospital, and mine at home, because they come through emergency and so have no opportunity to give express consent at all. Second, I really am worried that asking that of people upon admission would make many people feel like their level of care is going to be dependent on how they answer.

**Ms McLean:** Exactly.

**Ms Martel:** So I wonder if you can just comment on those two concerns.

**Ms McLean:** I will try briefly to comment on those. The first comment that we have is that most people when they enter emergency are not feeling like talking about what we're going to do with their information, other than knowing that it's secure within the institution they're entering.

We feel that they will have a tendency to decline to provide their information. They really are not thinking about it. They don't want to have to think about fundraising and hearing about us in the form of a newsletter or providing them with other kinds of educational opportunities when they're not feeling well. It's inappropriate to do that to someone.

We also know that our physicians do not support this, and we feel it will have a very negative impact on the number of people who will provide consent. It's a trickle-down effect: You don't provide the consent; we can't get the information; they're not feeling right at the time. It's just not the appropriate time to be doing that.

**The Chair:** Thank you very much, Ms McLean, for taking the time to come up and inform us about your concern.

**Ms McLean:** Thank you for asking.

#### MIDDLESEX HOSPITAL ALLIANCE

**The Chair:** Our next group is the Middlesex Hospital Alliance. On behalf of the committee, welcome to the public hearing on Bill 31. You have 20 minutes. You could take the whole 20 minutes or you could leave some time at the end for a question period. If we could have your name and title.

**Mr Mike Mazza:** My name is Mike Mazza, and I'm the chief executive officer of the Middlesex Hospital Alliance, made up of two hospitals: Strathroy Middlesex General Hospital and Four Counties Health Services. With me today is Sarah Padfield, who is the administrative coordinator at our Four Counties Health Services site.

**The Chair:** Very good. You may proceed.

**Mr Mazza:** Strathroy Middlesex General Hospital is an 87-bed community hospital located in Strathroy, Ontario, about 20 minutes northwest of London. Four Counties Health Services, located in the village of Newbury, approximately 40 minutes west of London, is a small rural hospital in the middle of southwestern Ontario with about 20 beds.

First, let me begin by saying how important this legislation is for hospitals in Ontario. I'm really delighted to have the opportunity to speak to you about this legislation and support it. Unlike the federal legislation that hospitals have been struggling to implement since January 1, 2004, this legislation specifically addresses the complexities and challenges of health care delivery organizations.

This legislation has a number of strengths that will allow hospitals to implement important measures that will protect and respect our patients' personal privacy while at the same time allow health care practitioners to continue to deliver health care both efficiently and effectively.

The government should be commended for their consideration and articulation of the implied consent framework; and I mean government in general, not necessarily any particular party. Having worked in the industry for many years, I can tell you that I have received many more complaints from patients that their information has not been shared with the system or their health care practitioners. It is a rare incident indeed when a patient has actually complained that we have in fact passed their information along, and I'm talking about 26 years in the health care industry.

1420

Health care is entering a new age and forging a new direction. Canadian patients are becoming health care consumers insofar as we are witnessing a much more informed patient population than ever before. These same patients are demanding higher levels of patient service and quality. In a country where individuals can easily access their banking accounts and financial information at any local ATM, health care consumers are beginning to demand this same type of client-focused care.

The legislation is important in that it builds in a review process and a ministerial approval processes for multi-facilities. This will be important as strategies such as regional initiatives—like teleradiography or the PACS project that the Thames Valley Hospital Planning Partnership is involved in—and further integrated services develop. These will be important strategies that will mitigate the shortage of health care professionals and physician labour and hopefully stabilize some of the escalating health care costs. It is important that barriers that would oppose the development of these strategies not be put in place by the government. While we respect the need for patient confidentiality, it is also important to recognize that the days of isolated hospitals and health care practitioners are no longer the way the system operates.

It is my feeling that this legislation reflects that reality effectively and will not pose a significant barrier in the



further development of the future of our health care system.

One of the areas of concern for hospitals, however, is the provision to limit consent, or the lockbox provision, which essentially allows patients to withhold or block critical information from their health care providers. It's particularly problematic in a hospital like Four Counties Health Services: 20 beds, small emergency department, ancillary services. From about 4 o'clock in the afternoon until about 8 o'clock in the morning, there is only one medical staff serving the entire hospital. So if a patient comes in and has an issue with that particular medical staff, I'm not sure how the hospital could provide services. The physician has to know what is going on regarding the patients he or she is responsible for. I don't understand how we would be able to address that part of the legislation.

From a management perspective, this will be an extremely difficult provision to manage. In the event that a patient does choose to withhold information from their health care practitioner, the hospital will essentially be charged with developing a cumbersome administrative process, not to mention the impact on the quality of patient care delivered in these circumstances.

Like many new legislative initiatives, the implementation of this privacy framework will have costs that will be incurred by hospitals and other health care delivery organizations. Hospitals such as Four Counties and the Strathroy-Middlesex General Hospital are not large enough to support full-time personnel devoted to the development of privacy policies, the assurance of accuracy, completeness and timeliness and other administrative processes without the financial support from the Ministry of Health and Long-Term Care.

A second but related area for concern relates to the potential regulations and requirements around the electronic collection and dissemination of personal information. Currently, any information systems do not have the capacity to lock out some users from general information. As the information systems in hospitals evolve, however, it is our hope that software applications will have this capability. These investments in technology and information systems are substantial and largely unsupported financially by the Ministry of Health and Long-Term Care for hospitals the size of Strathroy and Four Counties. As these investments are not correlated directly to the provision of patient care, they are often unjustifiable for our board of directors and as such have not been addressed.

Costs for software and other information technology infrastructure systems should be recognized and the ministry should be encouraged to support hospitals and health care delivery organizations as they implement this legislation.

Finally, I want to touch on the section that deals with fundraising and the release of personal information for the purposes of fundraising. It should be noted that the collective request to the Ministry of Health and Long-Term Care for capital investments as they relate to infrastructure total more than \$8 billion for 2004-05, accord-

ing to the Ontario Hospital Association. Hospital foundations and fundraising are extremely important for all hospitals. Given the serious financial situation of Ontario's hospitals, without the ability to raise funds and thereby make important capital investments and upgrade patient care equipment, it seriously jeopardizes the hospitals' ability to offer the highest quality health care possible.

Again, this legislation is an important and positive step for Ontario's hospitals and other health care delivery organizations and the government should move to enact it as quickly as possible.

Thank you for the opportunity to speak to you.

**The Chair:** Thank you. We have approximately nine minutes left and, it is the time of the government side.

**Mr Fonseca:** I'll put this question toward the fundraising. In regards to fundraising, do you not feel that if you were to ask for consent, if somebody were not to give you that consent, they're saying that they don't want to be solicited for funds?

**Mr Mazza:** Yes, I would agree with that. If somebody indicates to the hospital they don't want to be solicited, then they should be removed from further solicitations.

**Mr Fonseca:** Or if the hospital were to ask for that consent and the individual just said, "No, I do not want to be solicited," would the individual not be saying, "I don't want to receive anything"?

**Mr Mazza:** I can tell you that very recently—this is only anecdotal—a patient was talking about another hospital that we refer to and had gone for a pre-admit visit, a workup. Between their pre-admit visit and their surgery date, they got a letter from the hospital requesting a donation. The patient did wonder how their surgical outcome would be affected by the hospital's solicitation. So if we put solicitations that are explicit at the beginning, I think it can impact on the patient's perception that the money is somehow tied to the services the hospital is giving them individually.

Having said that, I don't think in today's world, at least as far as I judge by level of complaint, that people are necessarily turned off by receiving letters in the mail about requests for support for particular campaigns. They either tear them up and throw them out because the hospital foundation logo is on it, or else they ask to be removed from the foundation's donation list. In my experience, if anybody asks to be removed, we're very careful that that is done. The last thing we want to do is annoy our patients.

**Mr Leal:** Mr Mazza, do you have any preliminary estimates what it would cost you for software and other related activities for the implementation of this?

**Mr Mazza:** No, I don't have that. Actually because of the integration, particularly in the Thames Valley, the area outside of London that we're connected to, almost all the systems that we're moving to are multi-hospital systems, large software applications. So I'm not sure what those costs will be.

**Mr Leal:** Do you think this could be completed by July 1, the time frame that's been suggested in the legislation?



**Mr Mazza:** I think that would be problematic. The good thing is, of course, that if it becomes legislation, then these are large companies and they will respond because they're not doing it for individual hospitals. That cost will be definitely passed on to us, the hospitals. But some of these systems are fairly complex and many of them are American in origin. So legislative changes do take time when they come from the Ontario government.

**Mr Arnott:** Thank you, Mr Mazza, for your presentation this afternoon. One of the key themes we've heard about today, this morning and this afternoon, has been the issue of fundraising, and a number of presentations have been brought forward. I'm sure you're aware that your foundation made a good presentation in that regard.

**Mr Mazza:** I thought they did a good job.

**Mr Arnott:** But you've made reference to it too, and I think it's a very important point. I'm privileged to represent a riding that is about 80% small town and rural and I represent a couple of hospitals, and a couple that are adjacent to my riding that are small. One in particular, in the Fergus area, the Groves Memorial Community Hospital, is engaged in a significant fundraising campaign. They need to raise about \$15 million for a \$30-million capital redevelopment project. Obviously, I'm supportive of that and supportive of their application to the government. But I'm disappointed to hear some of the government members' line of questioning. It seems to imply that they don't agree that there needs to be some reasonable direct approach to, as you say, the grateful patients who have access to health services and are wanting to support the hospital. I just can't understand why a reasonable approach to grateful patients would be something the government would oppose.

1430

**Mr Mazza:** I would say that of course there's always a concern that patient services in some way are linked with financial donations, and I think that's quite a legitimate concern. But on the other side, there are patients who have resources that they are quite willing, as you point out, to give to their hospital in order to improve services.

**Mr Arnott:** I don't believe there's ever been an instance in a small-town hospital in the province of Ontario where care was delivered on the basis of people's ability to pay after the fact.

**Mr Mazza:** Even in small locations where, yes, I heard the mental health person say that they do know the shape and size and colour of the car, we do a pretty good job of keeping those two things separated. I can tell you, from an administrative point of view, that we really go out of our way not to have information about particular donors.

**Mrs Witmer:** Thank you very much, Mr Mazza, for your presentation. I want to go back. I think Mr Leal was on this issue. What you've been able to point out, and I think it's important sometimes that we do hear the more rural perspective from the small hospitals, is the fact that you don't have the human resources to put this process and this bill into place and you don't have the financial

resources either. We've been hearing from people as well that there is a need perhaps to put the timeline for implementation back. One of the dates that has been recommended, instead of July 1, would be January 1, 2005. Would that allow you a little more time to prepare for the implementation of this legislation, if there was a six-month delay, perhaps?

**Mr Mazza:** I would be very supportive of the idea of going January 1. I certainly don't want anyone to misunderstand how important this legislation is and how long we've been waiting for it, in terms of integrated systems and passing information on. But by putting a date of July 1, the hospitals simply won't be able to respond because our vendors are large multinational companies. So even though they're responding to the Ontario market, compared to their entire market, it's relatively small. So making those changes will take some time. Also, in terms of small hospitals, we will develop templates. The OHA is supportive of this legislation. That will work through the system. Not a lot happens in the summertime in our industry. I don't know what it's like in Parliament, of course, but not a lot of things get changed during the summer—vacation periods etc. January 1 I think would be an ideal target date.

**Ms Martel:** Thank you for being here today. I have two questions, one on fundraising and one on the lockbox.

I am concerned about the line of questioning too, from the other side, because everything I hear suggests that we need to have an amendment here. I don't think any of us are suggesting that if a patient doesn't want to give, they shouldn't be allowed not to give. The question is, when do you make that approach? I just really think that if you ask for express consent and you make that a condition of someone upon admission—they're being admitted and you're asking them about whether or not they want to donate—they sure are going to link their donation to their services. We should be looking for a way that the approach is made later, and I think the approach can clearly be made if the foundation receives only name, address and telephone number, no information with respect to health care, and you do it a couple of months later or a couple of weeks later, where there's no ability at all to tie care and the provision of it to a donation.

**Mr Mazza:** That's right.

**Ms Martel:** So we'll be moving some amendments, I think the two of us, in that regard.

Let me ask about the lockbox, because I have been struggling with clearly the breakdown that is following here: hospitals and health care institutions saying, "For the provision of quality care we need to know," and a number of community groups who are coming forward on behalf of patients with mental illness or patients with HIV and saying that these are the groups that are most disadvantaged when some of this information is released. So let me ask you this. A patient makes a conscious decision that they don't want their HIV-positive status known. Why would that affect their quality of care, coming into a hospital for a broken leg, appendicitis? Do you see what I'm getting at?



**Mr Mazza:** They all have different issues, but HIV should have absolutely no ramifications whatsoever, because we treat every single patient as though they were HIV-positive. You understand how that works. So it should have no impact.

I would be more concerned that in a small community sometimes there is an issue between a patient and a particular health care provider, so in our small hospital they don't want Dr X to know certain kinds of information. Well, in our small hospital, if you provide the authority to do that, we can't provide service to the patient. I don't know how we'd respond, to be quite honest.

**Ms Martel:** In a small community, would Dr X not usually end up to be their family doctor, though?

**Mr Mazza:** No, in our small hospital there is usually a rotation of family doctors. The eight doctors in the village take turns covering in-patients on a weekly basis in turn. So they would see patients from the other family doctor. The patient may have a problem with this doctor. That's where I think a problem would occur. I have to tell you that it doesn't happen very often, but if it did, with legislation, then I'm blocked. I don't know how exactly I would handle it because I would be in contravention of legislation.

**Ms Martel:** Can you give me a theoretical example? I understand the potential for personality problems, but it's the issue of the health care matter that the patient is choosing to disclose or not, right? Either they want to disclose a particular condition or they don't. Wouldn't that normally not really be impacted by who the physician is as much as they don't want the release of that condition to be known in any kind of environment? Do you understand where I'm trying to go?

**Mr Mazza:** Yes, you're talking about mental health, so they are schizophrenic but they're in for a broken leg and they don't want anybody to know they're schizophrenic. I'm not a medical expert. I would say, generally speaking, that shouldn't impact on their care. The only problem is we don't currently have the ability to lock down that kind of information. That's a different set of problems.

Your mental health diagnosis should have not too much direct impact on your medical treatment. In terms of mental health treatment, I'm not so sure how that would work, to be quite honest.

**The Chair:** Sorry, our time is up. I thank you for taking the time to inform us about your concerns and also for your comments.

#### COTA COMPREHENSIVE REHABILITATION AND MENTAL HEALTH SERVICES

**The Chair:** The next group will be COTA Comprehensive Rehabilitation and Mental Health Services. Once again, on behalf of the committee, welcome to the public hearings on Bill 31. You have 20 minutes, which can be taken by yourself or leaving time at the end for question

period. Please come up with your name and position so it could be recorded.

**Ms Linda Marshall:** Good afternoon, Mr Chairman and fellow committee members. My name is Linda Marshall. I'm the director of client systems and support services at COTA Comprehensive Rehabilitation and Mental Health Services. Accompanying me this afternoon is Mr Mark Schroeter. He is COTA's communications specialist.

**The Chair:** Thank you. You may proceed.

**Ms Marshall:** I would like to thank the committee for this opportunity to provide input on Bill 31. Our intention today is to provide you with a brief background of our organization and to share with you our perspectives on the proposed bill.

COTA is a not-for-profit, accredited community health and social services organization based in Toronto. Established in 1973, we are a proven leader in providing comprehensive rehabilitation, mental health and support services to people of all ages. Last year, we delivered client-centred care to over 21,000 individuals, enabling them to achieve greater independence by remaining within the community setting.

As a community-based service provider, COTA interacts with all other parts of the health care system, including the community care access centres, physicians, hospitals, school boards and other community partner organizations.

We are currently contracted with seven community care access centres in the greater Toronto area and, most recently, we have partnered with the CCAC of London and Middlesex to provide rehabilitation services to local residents.

1440

Our scope of service now extends from Peterborough through southwestern Ontario. We look forward to participating in the evolving system of community supports and services that enhance the quality of health care available to clients.

As one of the largest direct providers of community-based health care in the region, COTA supports clear and effective privacy legislation for a number of reasons.

We want to protect our clients from unnecessary disclosure of their confidential information. But we also want to ensure that our service provider personnel understand their role in maintaining confidentiality practices, both for their clients' protection as well as their own. In addition, we want to provide appropriate privacy policies and procedures that will enhance the effectiveness of our risk management program.

We really appreciate the consultative process this government has undertaken in relation to this bill. We strongly believe ongoing consultation with stakeholders is the right approach to ensure that health information custodians are in compliance with new processes regarding the collection, use and disclosure of client health information.

COTA understands that privacy of health care information is a sensitive and highly complex issue. In the



absence of clear provincial legislation to date governing the protection of health information, there has been considerable confusion around the scope of application of the federal legislation as it relates to community-based service providers.

Introducing privacy legislation specifically for health care information is a great improvement over the existing federal privacy act. We commend the government for moving forward so quickly to address the current issues around the protection of health information.

COTA supports a number of the key features of the Health Information Protection Act as well as the introduction of the Quality of Care Information Protection Act. For example, we regularly conduct applied research and program evaluations through our in-house research and development team. We are, therefore, very pleased to see that subsection 36(3) addresses the procedure for using personal health information for research processes.

COTA was recently accredited for the second time by the Canadian Council on Health Services Accreditation. This represents an important component of our ongoing quality management program and we welcome the inclusion of clause 38(1)(b) to clarify how personal health information can be disclosed to a person conducting an audit or reviewing an application for accreditation.

A final key feature that we find noteworthy is subsection 39(1) pertaining to disclosures related to risk. The legislation clearly supports the duty to warn and addresses how our service provider personnel may disclose personal health information in the interest of eliminating or reducing risk of bodily harm to another person.

Overall, we believe Bill 31 provides a reasonable balance between the protection of personal privacy and the effective delivery of health care, and the government should be commended for its efforts.

Like other presenters before us, we do share some concerns with certain aspects of this legislation. Rather than repeating in detail what you have already heard in previous presentations, we wish to present four key points that pose a potential impact on an organization such as ours.

First, the so-called lockbox provision is an area we believe deserves closer attention. COTA appreciates the need to ensure clients have an opportunity to control their personal health information. This is in keeping with our mission to deliver client-centred care.

However, some of our more vulnerable clients, such as those living with a mental health illness, may not always be able to discern what is in their best long-term interest. Should such an individual choose to withhold consent or block critical information from their community-based service provider, it may negatively impact the quality of care they receive.

Over 40% of COTA's client programs have a mental health focus. Our expertise in dealing with this population reinforces our belief that complete sharing of information between partner organizations is critical to providing the best possible care to society's most vulnerable population.

Both as recipients of health information from community care access centres and hospitals as well as providers of information to in-home service providers and community partner organizations, we believe the disclosure of all medically necessary information is essential to ensure the delivery of appropriate treatment at the appropriate time. We would therefore suggest that the government give serious consideration to removing these provisions as they pertain to patients living with a mental illness.

Second, we respectfully suggest that the government not underestimate the public education and preparatory work still required to ensure successful implementation. Our own experience preparing for PIPEDA legislation as of January 1, 2004, revealed the time and education required across the organization to ensure compliance. Activities that we find particularly time-intensive include developing an understanding of the legislation and its implications; reviewing, revising and developing policies that reflect the new legislation; and understanding how the act fits with other legislation.

The proposed implementation date of July 1 appears to be too soon for all required elements to be in place and understood by all stakeholders. We recommend a later implementation date that allows sufficient time to ensure successful implementation. In addition, we recommend broad-based education, targeting health information custodians, health care workers and the general public, to promote compliance with Bill 31.

Third, we urge the government to review the language of Bill 31 to ensure there is sufficient clarity to guide all participants involved in the delivery of community-based health care. Many community-based organizations such as ours may not be covered by the definition of "community service" as it pertains to community services primarily providing health care.

To illustrate, COTA is also a transfer payment recipient from the Ministry of Health and Long-Term Care. We utilize this funding to provide case management and housing site support services for our mental health clients. To guarantee compliance with Bill 31, we request clarification of the definition of community service as it applies to an organization such as ours.

Fourth, and finally, we feel that the regulation-making powers outlined in section 71 may compromise the original intent of the legislation. In response, COTA supports the process of ongoing public consultation to ensure that these regulations address their original objective; namely, the protection of personal health information.

In closing, I would like to repeat COTA's strong support for the principles outlined in Bill 31. Once again, thank you for the opportunity to make this submission and for your consideration of our concerns and recommendations.

**The Chair:** Thank you. We have approximately nine minutes left. I'll go to Kathleen Wynne.

**Ms Wynne:** I had a question about section 71. You want ongoing consultation. Can you talk about how that differs from what's in the act?



**Ms Marshall:** I don't think it differs. We're supporting ongoing consultation.

**Ms Wynne:** So is there anything about what you're suggesting that's—

**Ms Marshall:** It's not specific to any one statement that's made; it's more the philosophy of the intent of the legislation and making sure the regulations do reflect what the legislation is saying.

**Ms Wynne:** How might they not? I'm just trying to understand how what's written in section 71 might actually undermine the original intent. I just want clarification on that.

**Ms Marshall:** I think looking at if there are any loopholes where people will not be included or information that might not possibly be included.

**Ms Wynne:** Can you give a specific example from the legislation?

**Ms Marshall:** I don't think I actually can at this point. It was more a philosophy than specific.

**Ms Wynne:** OK. Is there any possibility that you could get us—I don't quite understand exactly where the concern would be and in which section of section 71.

**Ms Marshall:** I'll take that back to our organization, and we'll submit it to you.

**Ms Wynne:** I'd appreciate it. Thanks.

1450

**The Chair:** I will now go to the official opposition.

**Mrs Witmer:** I'm looking here at page 6. You're saying that you believe disclosure of necessary medical information is essential. However, are you suggesting that we remove all the provisions as they pertain to people living with mental illness?

**Ms Marshall:** We've really struggled with this—everyone has a right to confidentiality of their health information. I think we're looking at the words "health information" and really trying to understand what that means.

One of the concerns we were thinking about, for example, is a client with a mental health illness who has a history of aggressive behaviour. Would that be considered part of their health information? You can see that someone with a mental illness has a history of aggressive behaviour because of that mental illness. If that client can withhold that information, we have service providers going in to see people in their homes, and it puts health care providers in a vulnerable position.

So it's really looking at that kind of situation. We really support confidentiality of information, but it's that fine line between what is essential so we can provide the services we need to but in a safe environment.

**Mrs Witmer:** That would become quite complex. Do you have any recommended amendments?

**Ms Marshall:** I don't have any with me here, but again, I can send that in from our organization.

**Mrs Witmer:** OK. You probably know that we're going to start looking at the amendments on Monday, so the timeline is short. It's tomorrow.

I guess there are some people who came before us who are recommending that we remove anything related

to the lockbox altogether. I think we're certainly recognizing that there are some huge problems related to the lockbox provisions. There's a need for flexibility, but I guess it's difficult. You really can't discriminate against one group of people either.

**Ms Marshall:** Exactly.

**The Chair:** Ms Martel.

**Ms Martel:** Thank you for being here today.

That's where I was going as well, because we've seen a breakdown in terms of sides, essentially between hospitals, which say this is not going to work, and then community-based organizations that are supportive. Now we're seeing two different views within the mental health community as well, because the CMHA has essentially come forward and been supportive of the provision that would allow clients essentially to withhold some information. So I was going to ask you to give me some examples, because I am really struggling as well to see clearly how this would impact on patient care, which I don't want it to, but at the same time make sure that people who are more vulnerable than others, who have a stigma attached to them because of their illness, are not even in a worse state worrying about whether information like that is released.

**Ms Marshall:** The stigma concerns me too. We don't want to stigmatize this population, but we want to have a balance of what is appropriate and what's needed for a safe environment, really.

**Ms Martel:** The example you gave us was that you have workers working with patients with a mental illness who have a history of violence. I can appreciate that you'd want to be very clear that your workers would know that, especially if they're going into an environment where they're working one on one. I can appreciate that. But I don't have an answer to this. I've been struggling with what we do, because there has certainly been a call to have the provisions removed altogether, and then, on the other side, what I think are very legitimate concerns about why certain groups are much more at risk if their information is disclosed.

**Ms Marshall:** Yes.

**The Chair:** Thank you very much for your presentation. As you heard, clause-by-clause is starting on Monday and two members have asked you for some additional information, which I think might be quite important for them to receive. Thanks again.

**Ms Marshall:** Thank you very much for the opportunity.

## ONTARIO JOINT REPLACEMENT REGISTRY

**The Chair:** The next group is the Ontario Joint Replacement Registry. You might be the last, but you're surely not the least.

**Ms Susan Warner:** I hope not.

**The Chair:** You have 20 minutes. If you take 20 minutes, there won't be any time left for a question period. It is up to you to decide if you want to leave some



time for a question period. Could we have your name and title, please?

**Ms Warner:** Certainly. I'm Susan Warner. I'm the managing director of the Ontario Joint Replacement Registry, and I'll shorten that by saying OJRR.

**The Chair:** Thank you. You may proceed.

**Ms Warner:** Thank you very much for this opportunity to speak to this very important bill, which will really help and guide those of us who are involved in collecting, disclosing and using personal health information in doing our utmost to ensure the privacy of personal health information. I thought it would be important to give you a bit of background on the Ontario Joint Replacement Registry, so that's where we'll start, and then we'll move into talking about the implications of some of the provisions in the proposed bill and their impact on us.

We are a registry funded by the Ministry of Health and Long-Term Care. We are funded through the London Health Sciences Centre, and they are named as our host institution. As such, that sort of puts us under the legal umbrella of the London Health Sciences Centre, and I believe you heard from them this morning. However, we take our direction directly from the Ministry of Health and Long-Term Care. So the relationships are a little bit confusing. We also have an administrative and data agreement that is in process with the Ministry of Health and Long-Term Care, and they will guide and direct us, particularly around the data collection piece.

Our mandate is to maintain a registry database that informs and promotes evidence-based practice to the Ministry of Health and Long-Term Care, surgeons and hospitals on primary and revision total hip and knee replacement surgery in Ontario. We are charged with providing regional and provincial wait time data and operative data to the Ministry of Health on total hip and knee replacement surgery. We also serve as the Ontario portion of the national registry, known as the CJRR, the Canadian Joint Replacement Registry, which is housed at CIHI. Hence, we are the Ontario flow of information to the national registry.

We collect data directly from 169 surgeons across Ontario. They have obtained consent from their patients to submit their demographic, waiting time and surgical data to the registry. Our consent process is informed and explicit. Patients receive a written information sheet, and they also sign a form. That information sheet identifies our purposes, uses and disclosure of the data, and they are also instructed on what to do if they wish to change their mind and withdraw their consent.

If you look at page 3, I've put together a schema that shows you how information flows from the patients and surgeons to us and what we do with it, and then what the other groups who receive our data do with the data. Starting with the patient, they give us some information directly, with consent, and the surgeon also gives patient information to us, again with patient consent. We analyze the data, aggregate it and report on it. In order to do that, we need to do a few things with it.

The first thing we need to do is send it to the Ministry of Health and Long-Term Care. If you follow down the

left column, we send identifying information to the ministry for linkage with the OHIP billing files so the data can be verified. Then it comes back to us, and we aggregate it and prepare a report. Actually, our first report is about to come out publicly in about a month or two, which we're very excited about—we're still new at this.

The other piece the ministry receives the identifying information for is the submission to the Canadian registry. So our data flow to the Canadian registry is through the ministry. But again, it's personal health information that needs to go to the ministry for that purpose. The ministry also uses the aggregate information for system planning.

Surgeons receive back the personal health information of their patients. If they wish, they can receive back the raw data. They can also go to our Web site and view how well they're performing compared to the aggregate. That's secure, so a surgeon can only see the data for his or her own patients compared to the aggregate. Again, they use this information for evidence-based practice, for wait list management and for quality improvement and implant surveillance.

The Canadian Joint Replacement Registry receives the data from the ministry. Again, it's the personal record level information that they receive. That then is linked with the DAD, the discharge abstract database, and that is then summarized and compiled with the rest of the data that comes in to them from the rest of Canada and reported on, again publicly in aggregate form.

#### 1500

Third-party researchers: Assuming that they have gone through an REB, and assuming that their proposal has been approved by a research subcommittee and/or the Ministry of Health and Long-Term Care, they can then receive depersonalized information for research purposes. Device manufacturers can receive aggregated data for their quality assurance and for implant surveillance.

Flipping over to page 4, I want to talk about some of our unique features that pose a challenge but also give us great strength. First of all, we collect our data prospectively, which means we collect it when it happens. When somebody starts waiting, that's when we get information. When the surgery happens, that's when we get information.

The other part of our registry that makes us unique is that we track forward. For instance, we watch to see how devices perform in people over time. Again, the purpose of that is to reduce what's called the revision rate, which means re-operation. So we receive data and track it at different points in time. If you look at the timeline down below, that probably is the best way to describe how we function and how we need to function to fulfill our mandate.

We have John Doe, who starts waiting for his surgery in January 2004. We receive his personal health information at that point in time, just a small bit of it, which then tells us somebody is waiting. Then, in October 2004, nine months later, he has his surgery. Then, in March



2014, he has a revision surgery. In January 2020, he has a subsequent surgery. We need to be able to track that person through that time period, so we need a unique identifying number that, of course, in our system would be the health number.

In other words, for us to be able to fulfill the mandate that is provided to us by the Ministry of Health and Long-Term Care, we have to collect, use and disclose personal health information and the health card. In our opinion the legislation, the way it is currently written, doesn't provide for us to do those things, at least not in a way that's explicit or clear.

Therefore, we would like to recommend that the OJRR is identified, first of all, as a health information custodian under section 3 of the legislation. Without the designation, the implications for us include unclear direction to the Ministry of Health and Long-Term Care in the drafting of our administrative and data agreements as to how we can function. Also, if we're not identified as a health information custodian within the legislation, if our relationship were to ever sever with the London Health Sciences Centre, that then stops us from being able to do our business.

Second of all, we would like to recommend that in section 33 we are prescribed so that we can collect, use and disclose health card numbers. I'm going to flip over to page 4. Either we are prescribed under clause 33(2)(c) as a "prescribed health information custodian" that "is collecting or using the health number in circumstances that are prescribed," or that there is clarification that we be included in clause 33(2)(a) as "a provincially funded health resource." We're not certain on what that means and if we fit in there or not. Essentially we'd like clarity so that we can collect, use and disclose a health card number.

Our third suggestion or recommendation is that we are prescribed under clause 38(1)(c) as a disease-specific registry, so that we can receive personal health information. Again, under clause 37 or 38, (1)(a) and (1)(b), they don't apply to us, yet clause 38(1)(c) makes very explicit reference to registries that need to be prescribed. Again, that is our request.

In conclusion, we are well established, I believe, to comply with this legislation, particularly under consent. I'm very proud of our consent process. We have had the privilege and opportunity to be established during a time period when privacy has been a very hot issue, so we have set ourselves up right from day one with consent practices and with privacy policies and direction. So that's not a concern for us. The concern for us is simply establishing clarity on where we fit within the legislation and how we can carry on with our business. Thank you.

**The Chair:** Thank you very much. We have approximately six minutes left, and it is up to the official opposition.

**Mrs Witmer:** Thank you very much, Ms Warner, for your presentation today. I guess basically you're asking to be identified as a health information custodian in the same way that Cancer Care Ontario is and also the Cardiac Care Network. We heard from the London hospi-

tals this morning, which seem to be going in a slightly different direction, but I think you've made a good case here and certainly we're prepared to consider that within our amendments.

You're also then looking to be able to collect, use and disclose the health card numbers, and you've made a recommendation here that that would be prescribed under clause 33(2)(c), I see.

Number 3 says you want to be prescribed as a disease-specific registry. Can you just expand on the implications of not being able to do that?

**Ms Warner:** My understanding of section 38 is that it defines who may receive personal health information. If we're not prescribed as a registry under 38(1)(c), then my understanding is that we can't receive personal health information, and if we can't receive personal health information, we can't fulfill our mandate, because we won't be able to follow the people, particularly under the device surveillance portion of our mandate.

**Mrs Witmer:** So to continue to do the work that you were set up to do, it really is important that all three of these amendments would follow.

**Ms Warner:** Right.

**Mrs Witmer:** OK. Thank you very much.

**The Chair:** We move to Ms Martel.

**Ms Martel:** Thank you for being here today. I want to go back to a question that was raised by Ms Witmer because, of course, in an earlier presentation we heard something completely different from what you have given us. I appreciate we're hearing the other side of the story.

Essentially, the argument that was made was that it would be difficult to figure out who had the appropriate responsibilities under this act. I take it you don't see that problem.

**Ms Warner:** We've been in conversation, and I'm well aware of the hospital's position on this. Clearly, a lot more clarification needs to happen around this. I think it would be difficult both ways. I think it will potentially be even more difficult for the hospital if we are not prescribed as a health information custodian, because the implications that we're still trying to sort out, for instance—we are receiving data from different custodians throughout. Again, we're still trying to understand the implications of the legislation and who's an agent and at what point they're an agent and at what point they're a custodian, as it relates to a surgeon. But its potential is that, at the point in time that somebody starts the wait, we receive data directly from a community surgeon in private practice. Then, at surgery date, we receive the information from the same surgeon, who then is potentially an agent of an institution, because he is operating at a hospital. So does that mean the different data sharing agreements are required throughout?

In terms of complexity, that would mean that the hospital would have to manage data sharing agreements with 169 surgeons as we sit today, potentially 244 surgeons, plus all of the hospitals in Ontario that do joint replacement. It's complicated either way, I believe, but



our position again remains consistent with that of the other registries.

**Ms Martel:** I appreciate that.

**Mr Lou Rinaldi (Northumberland):** Thank you for your presentation. I guess my question's along the same lines. I'm just trying to understand it. If you were given health information custodian status, would that solve all your problems?

**Ms Warner:** If we were given health information custodian status without the other amendments?

**Mr Rinaldi:** Yes.

**Ms Warner:** I don't believe so.

**Mr Rinaldi:** An agent would be the same thing, I presume.

**Ms Warner:** Pardon me?

**Mr Rinaldi:** If you were given agent status, would that do the same thing? I guess you'd be restricted the same way?

**Ms Warner:** I don't believe so either. I believe we would still be restricted. Correct.

**Mr Rinaldi:** That's right. So either/or.

**Mr Ramal:** Thank you for your presentation. It was well done. I have a question. You said at the beginning you're working under the umbrella of the London Health Sciences Centre. Being under this umbrella would allow you to receive information and function, and this wouldn't be affected by the law?

**Ms Warner:** This wouldn't be affected by the law? Is that what you're asking?

**Mr Ramal:** Yes.

**Ms Warner:** Correct. But what it would do is it would guide the definitions of what a host institution is, because we still haven't defined what the parameters and rights and responsibilities of the host institution are, and that is still being worked through in the administrative agreement with the ministry. So clarity within this legislation would direct that and help us to do our business a little bit more effectively.

**Mr Ramal:** So basically you're asking for more details concerning your organization?

**Ms Warner:** Yes.

**The Chair:** Thank you very much for taking the time. We really appreciate your presentation.

**Ms Warner:** My pleasure, and I wish you well in your deliberations.

**Ms Wynne:** Mr Chair, I just wanted some clarification on what's going to happen on Monday.

**The Chair:** Just before we proceed, all amendments have to be submitted by 3 o'clock tomorrow afternoon, Friday, February 6, at Tonia's office: 3 o'clock tomorrow afternoon for any amendment that has to be submitted.

Then on Monday we resume for the clause-by-clause at 10 o'clock in the morning in room 151.

**Ms Wynne:** OK. When we resume at that time, is there going to be a general discussion? It seems to me there are going to be a number of amendments, some of which we'll all agree on and some of which we won't. I haven't been through this process before. Will there be a discussion about which ones we all agree on and we can just agree on those and then discuss the contentious ones?

**The Chair:** We have to go through every one of them. Sometimes it could be sections 1 to 5, if there is no amendment, that we could see carried without any discussion.

**Ms Wynne:** OK. So there is that possibility.

**The Chair:** I'm glad that you brought up this point. Really, at 10 o'clock we should explain to all the people how we will proceed.

**Clerk of the Committee:** We could agree to have opening statements if you wish, like five minutes per caucus—the committee can agree to that—or you could just start from section 1, "Are there any amendments?" and then discussion, and you just keep going.

But I should also let you know that because this bill isn't time allocated, there are other opportunities to raise amendments as we go along. So if we get on a section and somebody thinks, "OK. There's an amendment that we need to put forward," it can be done at that time as well.

**The Chair:** In other words, amendments could be brought in during the clause-by-clause.

**Clerk of the Committee:** Yes.

**Ms Wynne:** Oh, they can. So 3 o'clock tomorrow is—

**Clerk of the Committee:** By 3 o'clock we still need the bulk of the amendments. Otherwise, you will not have a package and you will not know what you're dealing with. So it's just if you've missed something.

**The Chair:** OK? Thank you very much for your co-operation. We started on time and we finished exactly 10 seconds before.

We're adjourned now.

*The committee adjourned at 1514.*

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Mrs Elizabeth Witmer (Kitchener-Waterloo PC)

### **Also taking part / Autres participants et participantes**

Mr Khalil Ramal (London-Fanshawe L)

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Ms Tonia Grannum

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Research and Information Services



## CONTENTS

Thursday 5 February 2004

<b>Health Information Protection Act, 2003, Bill 31, Mr Smitherman /</b>	
<b>Loi de 2003 sur la protection des renseignements sur la santé,</b>	
projet de loi 31, <i>M. Smitherman</i> .....	G-167
London Health Sciences Foundation .....	G-167
Mr Frank Kearney	
Hospital Psychology Association of Ontario.....	G-171
Dr Ian Nicholson	
False Memory Syndrome Foundation, Canada.....	G-173
Mr Adriaan Mak	
Ms Claudette Grieb	
Dr Harold Merskey	
London Health Sciences Centre / St Joseph's Health Care London .....	G-176
Ms Diane Beattie	
Ms Judy Farrell	
London Mental Health Alliance .....	G-178
Mr Michael Petrenko	
Ms Kristin Kumpf	
Ms Marnie Wedlake	
Ontario Chiropractic Association .....	G-181
Dr Bob Haig	
Association of Fundraising Professionals .....	G-184
Mr Kevin Goldthorp	
Ms Janet Frood	
Canadian Mental Health Association, Elgin branch .....	G-188
Ms Heather De Bruyn	
Strathroy Middlesex General Hospital Foundation / Four Counties Health Services	
Foundation / Association for Healthcare Philanthropy .....	G-191
Ms Susan McLean	
Middlesex Hospital Alliance .....	G-194
Mr Mike Mazza	
COTA Comprehensive Rehabilitation and Mental Health Services .....	G-197
Ms Linda Marshall	
Ontario Joint Replacement Registry .....	G-199
Ms Susan Warner	

120N  
C16  
G23

Government  
Publications



G-8

G-8

ISSN 1180-5218

## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 9 February 2004

# Journal des débats (Hansard)

Lundi 9 février 2004

**Standing committee on  
general government**

Health Information  
Protection Act, 2003

**Comité permanent des  
affaires gouvernementales**

Loi de 2003 sur la protection  
des renseignements sur la santé



Chair: Jean-Marc Lalonde  
Clerk: Tonia Grannum

Président : Jean-Marc Lalonde  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 9 February 2004

Lundi 9 février 2004

*The committee met at 1008 in room 151.*HEALTH INFORMATION  
PROTECTION ACT, 2003LOI DE 2003 SUR LA PROTECTION  
DES RENSEIGNEMENTS SUR LA SANTÉ

Consideration of Bill 31, An Act to enact and amend various Acts with respect to the protection of health information / Projet de loi 31, Loi édictant et modifiant diverses lois en ce qui a trait à la protection des renseignements sur la santé.

**The Chair (Mr Jean-Marc Lalonde):** Good morning, ladies and gentlemen. We'll get rolling. Thank you for being on time. Tomorrow morning, we'll start to make it exactly 10. At noon today, when we recess for lunch, we'll start back at one o'clock.

We have to deal with 154 amendments that everybody has received. Each member will be allowed up to a maximum of 20 minutes each time you are speaking.

This morning is the clause-by-clause consideration of Bill 31. We will start immediately with the amendment of section—there are really four sections. We will come back to this first page that we have on the bill, but we will deal with each section of schedule A immediately.

The first one that we have is an amendment moved by the NDP.

**Ms Shelley Martel (Nickel Belt):** I move that section 1 of the Personal Health Information Protection Act, 2003 be amended by adding the following clause:

“(c.1) to enable personal information to be shared and accessed, where appropriate, to manage the health system.”

This was a recommendation that was made in the presentation by Cancer Care Ontario. It's some additional information as to what the purposes of the act are. In their case, it was particularly a concern around “shared and accessible,” given their role with registries and other health information related to cancer.

**The Chair:** Are there any comments or questions on this amendment moved by Ms Martel?

**Mr Peter Fonseca (Mississauga East):** The purpose here was not to allow the information to be accessed and shared but to control and restrict access of information.

**The Chair:** Any other comments?

**Ms Martel:** The dilemma is that CCO does have to share personal information in terms of the work that it

carries out, both through the registry and with the individual cancer treatment centres. So I don't think there was any sense that in the sharing of that information they were going to disclose purposely or wilfully or be neglectful in that regard, but it was to try to get the committee to understand that their role does have a very specific sharing in order to allow them to do their work, in order for them to maintain the registry, in order for them to report to government on cancer statistics. I don't think there is anything untoward in terms of what they were suggesting.

**The Chair:** Other comments or questions? If none, we will proceed immediately with the voting.

All those in favour of the amendment moved by Ms Martel? Two.

All those against the amendment? Five.

The amendment is defeated.

Any other comments on section 1?

Shall section 1 carry? Everybody agree? No comments? Thank you.

We'll move on to the second one. We're on section 2. Any amendment?

**Ms Martel:** I had proposed two amendments that were put forward in the presentation by NAID with respect to both “destroy” and “dispose,” so I'm dealing with both.

In discussion this morning with counsel from the ministry, the ministry advised that there will be ongoing discussions with NAID to determine the regulations that will best deal with how information is both disposed of and destroyed, and it will be done by regulation. Given that I have had that undertaking, I will withdraw those two amendments.

**Clerk of the Committee (Ms Tonia Grannum):** On page 2 and page 3?

**Ms Martel:** Yes, both the amendment that had a definition for “destroy” and the next one, which had a definition of “dispose.”

**The Chair:** Both amendments have been withdrawn.

We'll move on to schedule A of the bill, the definition of “health care practitioner” in section 2.

**Ms Martel:** I move that the definition of “health care practitioner” in section 2 of the Personal Health Information Protection Act, 2003 be amended by adding the following clause:

“(b.1) a chaplain employed or accredited by a health information custodian.”



This is the first of several amendments that I've moved with respect to the faith communities and their desire to have some clarity in the bill which would allow faith communities to gain access, particularly to patients in hospitals. I gather that the government is bringing forward amendments this morning as well, so I'm not sure if yours are going to override mine, but I wanted someone to address it. You can let me know right now how you want to deal with that.

**The Chair:** Any comments, please?

**Mr Fonseca:** We will have our own fix of the chaplain issue in subsection 20(4). The ministry may be able to shed some *[inaudible]*.

**Mr Michael Orr:** I think we've provided a copy to the clerk.

**The Chair:** Could you introduce yourself, please?

**Mr Orr:** Michael Orr, counsel, Ministry of Health. I will read the principal amendment. The principal amendment being proposed is one to section 20. The motion would be that it be amended by adding a subsection which would say:

"(4) If an individual who is a resident or patient in a facility that is a health information custodian provides to the custodian information about his or her religious or other organizational affiliation, the facility may assume that it has the individual's implied consent to provide his or her name and location in the facility to a representative of the religious or other organization where the custodian has offered the individual the opportunity to withhold or withdraw the consent and the individual has not done so."

The idea there is that where the person provides the information about their religion and the facility offers the opportunity to the individual to withhold their consent from that being shared outside religious representatives for visiting purposes, then in that case they can assume that they have the individual's implied consent to provide his or her name or location only to the representative of the religious organization.

There is another amendment to section 18 which is simply for the purpose of facilitating that. I believe that it will be distributed. It's adding a subsection 18(3.1) and it says:

"(3.1) Subsection (3) does not apply to,

"(a) a disclosure pursuant to an implied consent described in subsection 20(4); or

"(b) a prescribed type of disclosure that does not include information about an individual's state of health."

The idea there is that although generally there is a requirement under 18(3) that information being provided to a non-health information custodian requires express consent, this would be an exception that would facilitate that.

**Ms Martel:** May I ask one other question just on this? I think that's great. My concern remains as follows: If someone comes in in an emergency and they're not in a position to provide consent, what do you do in that circumstance? You're talking about last rights being provided as well. What do we do then?

**Mr Orr:** The idea is that they have offered the individual an opportunity to withhold or withdraw the consent.

**Ms Martel:** I know you've gone part of the way because you've offered that, perhaps at admission. If they tick off the box that says they have a religious affiliation, that goes part of the way. My second concern is if they come in through emergency and they're seriously ill.

1020

**Mr Orr:** In those situations it may be something that was going to have to rely on substitute consent provisions. I should point out too that this only applies to disclosures, which means outside the organization. It doesn't apply to uses within the organization, so the chaplain of the institution, for instance, in providing services on behalf of the institution, would be able to provide services and have access to the individual's information for the purpose of performing his or her functions.

**Mrs Elizabeth Witmer (Kitchener-Waterloo):** Have you had an opportunity to run this by those from the religious orders who appeared before this committee? I'd be interested to see what shortcomings they could see. I think Ms Martel had identified the fact that somebody coming in through emergency who's unconscious, has no family, has been in a car accident or what have you obviously is not going to have the ability to let you know whether or not they want to give their consent.

**Mr Orr:** It's a good question. No, we have not yet run it by the faith communities and I think it's something we would like to do. One thing to consider, and I think it's something to consider just in the context of all our deliberations this morning, is the stage we're at, which is that we haven't yet reached second reading, and after second reading there will be opportunity to make some technical kinds of fixes.

**Mrs Witmer:** Mr Chair, maybe at this point in time, since it's my understanding that most of the stakeholders who made submissions are not aware of the fact that we're doing clause-by-clause today and haven't had the opportunity to review these amendments to determine whether or not they would address their concerns, if you would just put on the public record the process that will follow once we reach and make our final decisions today so that the public knows what type of further input they can provide between now and the final passage of the bill.

**Mr Orr:** Once we've gone through the process today, then I believe the next stage is that it gets reported back to the Legislature. Once we finish making amendments in committee, then I believe it gets reported back to the Legislature and it would be past second reading. At that stage, people would have the ability to access the bill and see the changes that have been made. At that stage, I believe there is an intention—and I'll look for confirmation.

**Mr Fonseca:** Yes, it is the government's intention to take it to committee after second reading.

**Mr Orr:** At that stage, if it goes to committee after second reading, then there will be the ability to address any concerns those groups may have with the bill that they have seen.

**Mrs Witmer:** As we go through the clause-by-clause today, then it's my understanding that the stakeholders haven't been contacted, and these amendments do not have their approval. The only other opportunity they would have now is when it goes to committee of the whole.

**Ms Halyna Perun:** My name is Halyna Perun. Some of the amendments, the government motions, have in fact been reviewed by particular stakeholder groups, and we could identify those motions where there has been consultation. Not all of them have had this type of consultation, but certainly with respect for example to the chaplaincy issue there would be something we'd still like to review with the organizations that submitted to the committee to make sure that all of their issues are addressed in the context of the amendments that were made.

**Mrs Witmer:** That would be really helpful, because we didn't get our package, obviously, until late Friday night. There certainly hasn't been an opportunity for us to communicate with all the stakeholders. I think it is important that the presentations that were made—hopefully we've tried to reflect the concerns to make this bill the best we can possibly make it, and we're still getting amendments now that we haven't seen.

So if you could, as we're going along, identify the ones that you feel have had stakeholder consultation and support, that would be really useful.

**Ms Perun:** Also, in terms of the process, because some of the submissions were due on Friday, and we as staff actually haven't had the opportunity to review all the submissions that have come in, we certainly would like the opportunity to address some of the some of the issues that perhaps this committee hasn't heard but that are reflected in the written submissions. Therefore, the second-reading and clause-by-clause approach would address the written submissions.

**Mrs Witmer:** Right, and that would give us the opportunity to make the additional amendments that would seem to be there to allow the bill to be improved. That's great. Thank you very much.

**Ms Martel:** I've heard what the government has to say, so I appreciate that we are going some way. You've heard my concerns and you've given us an undertaking that we're going back to the groups that raised it in the beginning to run the language by them and if we need some further amendments, they will come.

So why don't I withdraw my amendment and move yours when the time comes? I would withdraw.

**The Chair:** So the amendment has been withdrawn for the present time.

The next one is the Conservative amendment.

**Mrs Witmer:** I move that section 2 of the Personal Health Information Protection Act, 2003 be amended by adding the following definition:

“‘information manager’ has the meaning set out in subsection 17.1(1).”

As you know, this was a request that had been made by Smart Systems in order to make sure that this legislation did include their being defined within Bill 31.

I understand that this is very similar to privacy legislation that has been introduced in Manitoba, Saskatchewan and Alberta, where the role of the information manager is defined, and it is a person other than the agent with whom a health information custodian contracts for services that include the processing, storage and disposal of records that contain personal health information or information management, information technology or networking services to the custodian with respect to the custodian's records that contain personal health information.

**The Chair:** Any questions or comments?

**Mr Fonseca:** We have our own fix to the information manager issue in section 43.1, where we will set up a CIHI and ICES—

**Mrs Witmer:** What page is that, Peter?

**Mr Fonseca:** That is section 43.1, on page 79, where we will set up a CIHI-ICES-like data institute. Smart Systems for Health should be dealt with by regulations because it is an evolving organization.

**Mrs Witmer:** So it would be your plan to review this with those who have made this request to ensure that it does cover the concern they have and you want to treat it differently than it's being treated in the other provinces?

**Mr Fonseca:** Yes. I'll refer that to the ministry.

**Ms Carol Appathurai:** I just wanted to give a little context to the term “information manager.” We did have this term in Bill 159, along with “agent,” and we found that there was a great deal of confusion among stakeholders as to the meaning of “information manager,” which in fact is a subset of the term “agent,” and was put in there originally to ensure that the hospitals, when they hire information managers who look after their records and do their dictatyping, would be able to handle the information. When we talked with stakeholders, they recognized that this was a subterm of “agent” and suggested that we remove “information manager.”

1030

In fact, Smart Systems for Health does not handle, as it is presently constituted, health information. You will remember that at their presentation they indicated they only provide the pipeline for the movement of information, so it might be misleading to label them as an “information manager.” However, we do understand that they have special needs, and those needs can be addressed in regulation. Halyna will speak to that in more detail.

**Ms Perun:** There is also a proposed government motion at page 37—I just wanted to put this into context—with respect to section 17. There is a proposal to render that provision a little bit more flexible, to recognize that an agent sometimes will require to use or disclose the information outside of a control put on the agent by the custodian. That also would address some of the issues



that Smart Systems for Health raised in terms of their conduct with subcontractors.

In addition, we have a provision already in the bill which addresses the electronic transmission of information, which is set out in subsection 10(3), where a custodian that uses electronic means to collect, use, modify, disclose, retain or dispose of personal health information shall comply with the prescribed requirements, if any. So then again, here, with respect to electronic transmissions, we were thinking that we would work with Smart Systems for Health to determine what requirements are necessary.

With respect to section 17 and their proposal to have an agreement in place—and they actually spelled out up front what they would like to see in the legislation—this type of agreement is certainly envisioned, but again, in regulations. Clause 17(1)(c) speaks to the prescribed requirements, if any, and then in the regulation-making powers we actually address agreements specifically around electronic transmission. So what we'd like to do is in fact work with Smart Systems for Health to address their systems and also then to determine the entire regulation under this legislation.

Of course, if it turns out that we in fact do need to address their specific issue by some specific provision in the bill, we would come back to that at second reading.

**Mrs Witmer:** I appreciate your explanation. So you haven't talked to Smart Systems yet but I guess you're committing that you're going to make sure that the concerns they had will be addressed.

I just have one question, then. You've indicated there is this amendment on page 79 and you indicate in the first line here:

"43.1(1) A health information custodian may disclose to a prescribed entity...."

Is that entity defined anywhere?

**Ms Perun:** No, it's not, actually. This amendment, section 43.1, really speaks more not to Smart Systems for Health but to CIHI, ICES and Cancer Care Ontario, for example, which would be the kinds of prescribed entities that would be prescribed under this section.

The amendment with respect to Smart Systems for Health particularly is the amendment at page 37, subsection 17(2), which is basically, as I indicated, just to allow a little bit more flexibility around the responsibilities of agents separate from the custodian.

**Mrs Witmer:** I'll withdraw the amendment, then, based on the information I've been provided.

**The Chair:** So this amendment has been withdrawn.

We'll move on to the next one, an NDP motion.

**Ms Martel:** The next two motions I moved as a result of a presentation that was made to us by the Canadian Mental Health Association, by Patti Bregman. I'm advised this morning by counsel that there will be changes that will be made in the Health Care Consent Act with respect to spouse, which is the next one. I'm forgetting why it was all right for "relative" not to be changed. Sorry, do you want to tell me again?

**Ms Perun:** This is very technical. There was a concern that the Canadian Mental Health Association did raise to make sure that the word "relative" was consistent to the Health Care Consent Act words. In fact, they are; it's just that they appear differently.

"Relative" in the definitions section of Bill 31, which is on page 8, "means either of two persons who are related to each other by blood, marriage or adoption." In the Health Care Consent Act, it was chosen to say "'in relation to two persons' means that they are related by blood, marriage or adoption."

If we change it in this way, I just want to note that we already have this approach. In our definition of "partner" on page 7, again, it says "means either of two persons." "Partner" means one person. He or she is just a partner of the other person. A "relative" means one person who's a relative of the other person. "Spouse" also means either of two persons. So just for consistency purposes, I would say that it should be the same. However, it's a very technical explanation.

**Ms Martel:** That's all right. You're going to make a change with respect to "spouse," but the change that you're going to make there when you go back in is going to be to the Health Care Consent Act.

**Ms Perun:** Right. With respect to the next motion, the issue here is that in Bill 31, the definition of spouse is that they are married to each other, except if they are living separate and apart. Basically, if you are married but you are apart, you shouldn't be making substitute decisions on behalf of someone you're estranged from. That is why in the Health Care Consent Act, it goes on further to say "within the meaning of the Divorce Act," because in the Divorce Act, if you live separate and apart for a year, that's your "apart."

The issue with the Divorce Act, however, is that the spouse means "either of a man or a woman who are married to each other." The approach taken in this particular bill, as well as other amendments to the Health Care Consent Act, already recognizes conjugal relations of any kind as equal so that, therefore, there is in fact a need to amend the Health Care Consent Act to delete the words "within the meaning of the Divorce Act." There will be a motion to address that issue.

**Ms Martel:** Mr Chair, if I might, I will withdraw both the definition of "relative" and then the next one, definition of "spouse."

**The Chair:** So both have been withdrawn. Any further discussion on section 2? If not, we'll move on to the next one.

Shall section 2 carry? All those in favour? Against? Carried.

Now we'll move on to section 3. Government motion.

**Mr Fonseca:** Schedule A of the bill, definition of "health information custodian" in subsection 3(1) of the Personal Health Information Protection Act:

I move that the definition of "health information custodian" in subsection 3(1) of the Personal Health Information Protection Act, 2003 be amended by striking out

the portion before paragraph 1 and substituting the following:

“‘health information custodian,’ subject to subsections (2) to (10), means a person or organization described in one of the following paragraphs who has custody or control of personal health information as a result of or in connection with performing the person’s powers or duties or the work described in the paragraph, if any.”

**The Chair:** Questions or comments?

**Mrs Witmer:** Yes, just a question. You’ve added the word “organization.” Why would you not have, or should you, in the last line, “performing the person’s or organization’s powers or duties”? Is there any need to repeat that again?

**Mr Fonseca:** Industry Canada requested to make it more similar to PIPEDA to add “organization.”

**Mrs Witmer:** OK. Just in that one instance?

**Ms Perun:** The advice of Industry Canada was because PIPEDA addresses “organization.” In our view, we really didn’t need that particular word, but they just asked that it appear at least once in the definition of custodian. That’s why it’s there.

1040

**The Chair:** Any more comments or questions? If not, we’ll vote. All those in favour of the amendment, as moved by Mr Fonseca? Against, if any? Carried.

The next one is a government motion.

**Mr Fonseca:** Schedule A to the bill (paragraph 1 of the definition of “health information custodian” in subsection 3(1) of the Personal Health Information Protection Act, 2003).

I move that paragraph 1 of the definition of “health information custodian” in subsection 3(1) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

“1. A health care practitioner or a person who operates a group practice of health care practitioners.”

**The Chair:** Questions or comments? If none, all in favour? Against, if any? Carried.

Shall section 4—

*Interjection.*

**The Chair:** There’s one more? A couple more, sorry.

The next one is a PC motion.

**Mrs Witmer:** Yes. I guess in light of the explanation that I’ve been given as far as the definition of “health information custodian,” I’m not sure that it’s necessary any more. But anyway, I move that paragraph 3 of the definition of “health information custodian” in subsection 3(1) of the Personal Health Information Protection Act, 2003 be amended by adding the following subparagraphs:

“viii. Cancer Care Ontario.

“ix. Cardiac Care Network.

“x. Ontario Joint Replacement Registry.”

Perhaps the ministry staff could review as to why this may no longer be necessary.

**Ms Appathurai:** It was our intention that these health information custodians in regulation—you’ll notice that under the definition of “health information custodian,”

the last subparagraph, subparagraph vii, gives us the power to prescribe in or prescribe out. That gives us flexibility to adjust to change. Two years ago Cancer Care Ontario was a health care provider; in fact, it no longer provides health care. We don’t want to fix in stone in the legislation, but give ourselves flexibility in the regs. As well, the Ontario Joint Replacement Registry in fact is not an independent entity, but could be listed as appropriate through the regulations as a registry. Again, the Cardiac Care Network is a registry; it doesn’t really provide health care.

In addition, there are, I’ve been told, over 100 registries floating out there and we would then want to look at each one of those and see where they would be appropriately placed, either as a custodian or as a registry, depending on the services they provide. But we would like to do that through the regulations because it gives us more time and more flexibility.

**Mrs Witmer:** Thank you very much. I would withdraw this, based on the explanation.

**The Chair:** So this one is withdrawn. We’ll move on to the second one. It’s an NDP motion.

**Ms Martel:** The amendments are the same, but I had another question, and I think this stems from the presentation we heard in London, where we heard two very different presentations about how the joint registry was going to be described. We heard the hospital say that essentially they wanted to be the custodian, and we heard from the registry that there might be some need for them to be a custodian. So I appreciate that you would like to do this by regulation. But that doesn’t solve, in my mind at least, where you might be going with respect to that particular issue and who’s going to prevail. Because that is an issue that I think has to be sorted out.

I’d also like to know—because this was certainly a specific amendment that Cancer Care Ontario had requested—have you had discussions with any of those three to let them know this is the ministry’s preferred method?

**Ms Perun:** With respect to Cancer Care Ontario, we’ve had discussions where we have indicated that they would be listed as a custodian under the act. As well, they could certainly be listed as a registry. There’s a disclosure without consent for the purposes of the specific registries that are prescribed and also with respect to this new proposed section 43.1, where one of the prescribed entities would be Cancer Care Ontario. So we’ve discussed it with Cancer Care Ontario.

Now with respect to—

**Ms Martel:** Halyana, before you start, then—pardon me for a second. If you’ve told them that, will they not then be registered under this subsection 3(1), if you’ve told them they’re going to appear as a health care custodian?

**Ms Perun:** That’s right. But it would be under the regulations—

**Ms Martel:** Seven.

**Ms Perun:** —which would be section 7, yes. Any other person prescribed as a health information cus-



todian, then their issue is—I'm guessing that they would then say that they should be within the circle of care, able to rely on the implied consent rule. In that case, the regulation-making powers under this bill do allow for including entities that are prescribed under section 7 to also be included in certain provisions of the act, such as the implied consent rule or a circle of care.

**Ms Martel:** There was already a great deal that was going to be done by regulation. I appreciate that you're working with the presentations that we all saw at the very last minute, but I would feel more comfortable knowing when we come back to this, that as much that can be moved into legislation be moved. I just think there's a lot going on in regulation right now and I'm not terribly comfortable with that continuing. If you see opportunities where we can work in reverse, I think that's what we need to try and do when we come back to this.

So Chair, based on that and on the previous explanation to Ms Witmer, I will withdraw the amendments.

**Clerk of the Committee:** Sorry, Ms Martel, amendments on pages 11 and 12?

**Ms Martel:** The next two. So there was an amendment to include Cancer Care Ontario, the next one was the Ontario Joint Replacement and then Cardiac Care Network.

**The Chair:** Thank you. So we'll move on to amendment 14, the government motion.

**Mr Fonseca:** I move that paragraph 1 of subsection 3(2) of the Personal Health Information Protection Act, 2003 be amended by striking out "unless the person is deemed to be a separate health information custodian under this section" at the end.

**The Chair:** Questions or comments? If none, all in favour of the amendment? Against, if any? Carried.

NDP motion number 14.

**Ms Martel:** This goes back to recommendations that were made to us by Smart Systems and, given the earlier explanation of how the ministry is going to work with them to deal with their concerns, I will withdraw the motion.

**The Chair:** Withdrawn. Thank you. Government motion 16?

**Clerk of the Committee:** Section 3.

**The Chair:** Sorry, thank you. Section 3. Shall section 3, as amended, carry? Against? Carried.

Now we'll move on to section 4, government motion 16.

**Mr Fonseca:** I move that clauses (b) and (g) of the definition of "personal health information" in subsection 4(1) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"(b) relates to the providing of health care to the individual, including the identification of a person as a provider of health care to the individual," ...

"(g) identifies an individual's substitute decision-maker."

1050

**The Chair:** Questions or comments? If none, in favour? Against, if any? Carried.

Amendment number 17, a government motion.

**Mr Fonseca:** I move that the definition of "identifying information" in subsection 4(2) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"'identifying information' means information that identifies an individual or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual."

**The Chair:** Questions or comments? If none, in favour? Against, if any? Carried.

Shall section 4, as amended, carry? In favour? Against? None. Carried. Section 4 has been carried, as amended.

Section 5: There's no amendment on this one, I believe. Any discussion on section 5? If none, shall section 5 carry? Against? Carried.

We'll move on to section 6 and the amendment by the NDP, number 18.

**Ms Martel:** I'm sorry, Chair. I see there are three different amendments. Ms Witmer's and mine are the same. I'm just trying to remember who gave us that information. I'm sorry, Mr Chair. My apologies.

**Ms Perun:** That's the Smart Systems for Health—

**Ms Martel:** All right. Thank you very much, Halyna, for helping me out.

I would withdraw mine, given the conversation the ministry is going to have with Smart Systems.

**The Chair:** So amendment number 18 is withdrawn.

Amendment number 19, a PC motion.

**Mrs Witmer:** Our motion is similar to the NDP motion, and in light of the discussion, I would withdraw it as well.

**The Chair:** So amendment number 19 has been withdrawn.

Amendment number 20, a government motion.

**Mr Fonseca:** I move that subsection 6(1) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Interpretation

"6. (1) For the purposes of this act, the providing of personal health information between a health information custodian and an agent of the custodian is a use by both persons, and not a disclosure by the person providing the information or a collection by the person to whom the information is provided."

**The Chair:** Questions or comments? If none, in favour? Against, if any? Carried.

Shall section 6 of schedule A carry, as amended? In favour? Against, if any? None. Carried.

Amendment number 21, a government motion.

**Mr Fonseca:** I move that section 7 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:

"Interpretation

"(2.1) For the purpose of this section, there is no conflict unless it is not possible to comply with both this

act and its regulations and any other act or its regulations.”

**The Chair:** Questions or comments?

**Mrs Witmer:** I would just like an explanation of why we’re adding this and what the impact would be on other regulations and acts.

**Mr Fonseca:** If there are two acts, this allows the act with the higher standard to be followed, and it deals with the RHPA issue.

**Ms Perun:** If I may, just a further explanation. This is the first of a number of amendments that have been made, or are proposed to be made, to address the issues that were raised by the regulated health professions at the standing committee here. This one, for example, would address that issue that you heard, where one college said, “Well, if we expect accuracy, and your act says ‘reasonable accuracy,’ we would like to make sure that our members follow the accuracy standard.” This proposed motion basically would speak to that. In other words, where you can comply with both, there’s no conflict. This motion, as well as a number of other motions that address that RHPA type of amendments, has been reviewed and approved by the Federation of Health Regulatory Colleges of Ontario.

**Mrs Witmer:** Thank you very much for that explanation and also listening to the concerns that had been raised by the colleges.

**Ms Martel:** If I might, when we get to the relevant sections, and I know there are more coming, if you could identify those, that would be useful, because we have amendments as well. We need to know which ones we have to withdraw.

**The Chair:** Any more comments or questions? If none, those in favour of the amendment? Against, if any? None? The motion is carried.

Amendment number 22, an NDP amendment.

**Ms Martel:** I’m going to ask Halyna for an explanation, because this was also one of the changes that was proposed by a number of the groups.

**Ms Perun:** With respect to the NDP motion on page 22, the motion that was just passed would address the conflict issue, so therefore, in my view, subsection (4) is not needed in light of the change made in subsection 7(2.1).

Then later on there is also a proposed government motion pertaining to subsection 9(2) that deals with the issue of not interfering with college activities. That is set out on page 28, which is subsection 9(2), an addition to 9.1 of subsection 9(2).

**Ms Martel:** Mr Chair, given that the previous amendment fixes what we needed fixed, I will withdraw my motion.

**The Chair:** Amendment number 22 has been withdrawn by Ms Martel.

We’ll move on to amendment number 23, a PC motion.

**Mrs Witmer:** Thank you very much, Mr Chair. I move that section 7 of the Personal Health Information Protection Act, 2003 be amended by adding the

following subsection. I’m going to take out number 4, in light of what we’ve heard, but I would like to include:

“Exception

“(5) This act and its regulations shall prevail in the event of a conflict between a provision under this act and a provision under Bill 8 (An Act to establish the Ontario Health Quality Council, to enact new legislation concerning health service accessibility and repeal the Health Care Accessibility Act, to provide for accountability in the health service sector, and to amend the Health Insurance Act) introduced November 27, 2003.”

We presently have two acts that both deal with privacy legislation, and I want to make absolutely certain that this bill does prevail over the provisions that are contemplated in Bill 8.

**Ms Kathleen O. Wynne (Don Valley West):** The way Bill 31 is written now, it will prevail over Bill 8. That’s how it has been drafted. So if there were to be any change, Bill 8 would have to be amended, but the way it’s written, Bill 31 will prevail over Bill 8.

**Ms Perun:** Subsection 7(2) of Bill 31 at page 15 already says, “In the event of a conflict between a provision of this act or its regulations and a provision of any other act or its regulations, this act and its regulations prevail unless this act, its regulations or the other act specifically provide otherwise.”

In other words, in order for Bill 8 to prevail over Bill 31, there would have to be either a specific reference about that in Bill 31 or a specific reference in Bill 8 to say that that act prevails over PHIPA; currently, it does not. The conflict provision already deals with that issue.

1100

**Mrs Witmer:** Basically, then, when we get to Bill 8 those provisions in there could be taken out.

**Ms Perun:** You have to make sure that that act does not say that act prevails over PHIPA.

**Mr Jerry J. Ouellette (Oshawa):** Does that mean they could bring in a regulation that says that act “prevails over” in Bill 8?

**Ms Perun:** In this bill, there could be a regulation that could be passed that would say that this act prevails over some other—

**Mr Ouellette:** No, what I’m asking is, in Bill 8 can a regulation come out that says that that act prevails over this act?

**Ms Perun:** No, because it says, “or the other act specifically provide otherwise.” It has to be actually right in the legislation; it cannot be in the regulations.

**Ms Wynne:** So, as I understand it, it would have to say in Bill 8 that Bill 8 prevails over Bill 31—in the legislation.

**Ms Perun:** That’s right.

**Ms Wynne:** Which it doesn’t say. That’s what I meant. Bill 8 would have to be amended in order for it to prevail over Bill 31. If Bill 8 is not amended actually in the legislation, then Bill 31 will prevail over Bill 8.

**Ms Perun:** Right.

**Mrs Witmer:** I withdraw this amendment.



**The Chair:** So amendment number 23 has been withdrawn.

Shall section 7 of schedule A carry, as amended? All those in favour? All those against? None. Carried.

Section 8: amendment number 24, a government motion.

**Mr Fonseca:** I move that subsection 8(2) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

“Exceptions

“(2) Sections 11, 12, 15, 16, 17, 33, 36 and 44 and subsection 35(2) of the Freedom of Information and Protection of Privacy Act and sections 5, 9, 10, 24, 25, 26 and 34 of the Municipal Freedom of Information and Protection of Privacy Act apply to a health information custodian that is an institution within the meaning of either of those acts, as the case may be, in respect of records of personal health information in the custody or control of the custodian.

“Same

“(2.1) A record of personal health information prepared by or in the custody or control of an institution as defined in the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act is deemed to be a record to which clause 32(b) of the Freedom of Information and Protection of Privacy Act and clause 25(1)(b) of the Municipal Freedom of Information and Protection of Privacy Act apply.

“Access under freedom of information legislation preserved

“(2.2) This act does not limit a person’s right of access under section 10 of the Freedom of Information and Protection of Privacy Act or section 4 of the Municipal Freedom of Information and Protection of Privacy Act to a record of personal health information if all the types of information referred to in subsection 4(1) are reasonably severed from the record.”

**The Chair:** Questions or comments?

**Mr John Yakabuski (Renfrew-Nipissing-Pembroke):** There are a number of sections that have been deleted, and some added, as a result of this amendment. Can we get an explanation on that?

**Mr Orr:** The changes to subsections 8(2) and 8(2.1) are basically technical changes. They’re aimed at clarifying the duties of health information custodians covered at the same time by the Freedom of Information and Protection of Privacy Act or the municipal equivalent and achieving greater harmony between this bill and those two acts.

If I could just address a few of the particular sections that have changed, there has been an addition of section 17 of FIPPA and section 10 of MFIPPA. Those are mandatory non-disclosures of third-party information. What we’ve done here is all the mandatory non-disclosures in both acts have been maintained so that the ministry, for instance, will continue to be under an obligation not to disclose what it’s under an obligation not to disclose now. That particular one was left out in error, so

we put that in. All the non-disclosure provisions are now covered.

Now, 31 and 32, 34 and 35 of FIPPA—the references to the Freedom of Information and Protection of Privacy Act—were taken out of this section. The references to 31 and 32 were felt not to be necessary, given the fact that those sections apply primarily to the Secretary of Management Board. What we have done is added (2.1) simply to clarify that the records referred to under section 32 of FIPPA do indeed include personal health information.

The bottom line is that there is no policy change intended by these amendments. If you look in motion 119, some of the matters that were dealt with in the sections that were simply referred to have now been dealt with by making amendments to those sections rather than by referring to them here, so that it includes the references in both acts.

I’m not sure if you want me to address subsection (2.2) also.

**Mr Yakabuski:** No, I understand what you’re getting at here. It’s very technical.

**The Chair:** Other comments or questions? If none, in favour of government motion number 24? Against, if any? Carried.

Shall section 8 of schedule A carry, as amended? In favour? Against? None. Carried.

Motion number 25 of section 9 is a government motion.

**Mr Fonseca:** I move that clauses 9(2)(b) and (c) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

“(b) any legal privilege, including solicitor-client privilege;

“(c) the law of evidence or information otherwise available by law to a party or a witness in a proceeding;”

**The Chair:** Questions or comments?

**Mrs Witmer:** Just one question regarding the addition of the words in (b), “any legal privilege.” What type of privileges would this cover?

**Ms Perun:** It was brought to our attention that this act should not interfere with other types of legal privileges, such as mediation privilege or settlement privilege. It was just a clarification.

**Mrs Witmer:** Thank you.

**The Chair:** Other comments or questions? If none, those in favour of amendment number 25? Against, if any? None. Carried.

Amendment number 26 is an NDP motion.

**Ms Martel:** This was to respond to some of the concerns that were raised by the faith communities. Since the ministry is going to undertake to talk to them to clarify their concerns further, I’ll withdraw the amendment.

**The Chair:** Amendment number 26 has been withdrawn.

Amendment number 27, an NDP motion.

**Ms Martel:** Again, this came in the package that was given to us, I believe, by the federation in their presen-

tation, which was to try to sort out some of their concerns. It has been addressed somewhere, I'm sure. Do you mind just telling me?

**Ms Perun:** The next motion, at page 28, actually deals with it.

**Ms Martel:** Then I will withdraw my motion.

**The Chair:** Number 27 has been withdrawn, so we'll move on to motion number 28, a government motion.

**Mr Fonseca:** I move that subsection 9(2) of the Personal Health Information Protection Act, 2003 be amended by striking out "or" at the end of clause (d) and by adding the following clauses:

"(d.1) the regulatory activities of a college under the Regulated Health Professions Act, 1991, the college under the Social Work and Social Service Work Act, 1998 or the board under the Drugless Practitioners Act; or"

**The Chair:** Questions or comments? If none, those in favour of government motion number 28? Against? None. Carried.

The next one is amendment number 29, a PC motion.

**Mrs Witmer:** This motion, again, was intended to provide for the input we'd received from the regulated health professions, but that's now been addressed. I'd withdraw it.

1110

**The Chair:** Number 29 has been withdrawn by the PCs.

Shall section 9 of schedule A, as amended, carry? In favour? Against, if any? None. Carried.

Section 10: There is no amendment. Shall section 10 carry? In favour? Against? None. Section 10 is carried.

**Ms Wynne:** Chair, did we pass section 9?

**The Chair:** Yes, we did.

Section 11: There is no amendment. Shall section 11 carry? Against, if any? None. Section 11 is carried.

Section 12: There's a government motion.

**Mr Fonseca:** I move that subsection 12(1) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Security

"12(1) A health information custodian shall take steps that are reasonable in the circumstances to ensure that personal health information in the custodian's custody or control is protected against theft, loss and unauthorized use or disclosure and to ensure that the records containing the information are protected against unauthorized copying, modification or disposal."

**The Chair:** Questions or comments? If none, those in favour of the amendment? Against, if any? None. Carried.

Shall section 12 of schedule A carry, as amended? In favour? Against? None. Carried, as amended.

Section 13: A government motion.

**Mr Fonseca:** I move that section 13 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:

"Retention of records subject to a request

"(2) Despite subsection (1), a health information custodian that has custody or control of personal health information that is the subject of a request for access under section 51 shall retain the information for as long as necessary to allow the individual to exhaust any recourse under this act that he or she may have with respect to the request."

**The Chair:** Questions or comments? If none, shall amendment number 31 carry? In favour? Against, if any? None. Carried.

Shall section 13 of schedule A carry, as amended? In favour? Against, if any? None. Carried, as amended.

Section 14: A government motion.

**Mr Fonseca:** I move that section 14 of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Records kept in individual's home

"14(1) A health information custodian may keep a record of personal health information about an individual in the individual's home in any reasonable manner to which the individual consents, subject to any restrictions set out in a regulation, bylaw or published guideline under the Regulated Health Professions Act, 1991, an act referred to in schedule 1 of that act, the Drugless Practitioners Act or the Social Work and Social Service Work Act, 1998.

"Records kept in other places

"(2) Subject to subsection (3), a health care practitioner referred to in clauses (a) to (c) of the definition of 'health care practitioner' in section 2 may keep a record of personal health information about an individual in a place other than the individual's home and other than a place in the control of the practitioner.

"Same

"(3) A health care practitioner may keep a record of personal health information about an individual in a place as permitted under subsection (2) if,

"(a) the record is kept in a reasonable manner;

"(b) the individual consents;

"(c) the health care practitioner is permitted to keep the record in the place in accordance with a regulation, bylaw or published guideline under the Regulated Health Professions Act, 1991, an act referred to in schedule 1 of that act, the Drugless Practitioners Act or the Social Work and Social Service Work Act, 1998; and

"(d) the prescribed conditions, if any, are satisfied."

**The Chair:** Questions or comments? None.

Shall amendment number 32 carry? In favour? Against? None. Carried.

Shall section 14 of schedule A, as amended, carry? In favour? Against, if any? None. Carried.

Section 15: amendment number 33, government motion.

**Mr Fonseca:** I move that subsection 15(4) of the Personal Health Information Protection Act, 2003 be amended by striking out "clauses (3)(c), (d) and (e)" and substituting "clauses (3)(b), (c), (d) and (e)."

**The Chair:** Questions or comments?



If none, shall amendment number 33 carry? Against, if any? None. Carried.

Shall section 15 of schedule A, as amended, carry? In favour? Against, if any? None. Carried, as amended.

Section 16: no amendment. Shall section 16 carry? In favour? Against, if any? None. Carried.

Section 17: amendment number 34, government motion.

**Mr Fonseca:** I move that subsection 17(1) of the Personal Health Information Protection Act, 2003 be amended by striking out the portion before clause (a) and substituting the following:

“Custodian responsible for agents

“17(1) A health information custodian is responsible for personal health information in the custody or control of the health information custodian and may permit the custodian’s agents to collect, use, disclose, retain or dispose of personal health information on the custodian’s behalf only if,”

**The Chair:** Questions or comments? If none, in favour of the amendment number 34? Against, if any? None. Amendment number 34 is carried.

Amendment number 35 is an NDP motion.

**Ms Martel:** Mr Chair, this was put in to address some of the concerns that have come forward by Smart Systems. Given that the ministry will work with them to deal with the concerns, I will withdraw it.

**The Chair:** So amendment number 35 has been withdrawn by Ms Martel. We’ll move on to amendment number 36, a PC motion.

1120

**Mrs Witmer:** Likewise, this motion was intended to respond to the concerns raised by Smart Systems, and in light of our discussion I would withdraw this.

**The Chair:** Amendment number 36 has been withdrawn by Mrs Witmer.

We’ll move on to number 37, a government motion.

**Mr Fonseca:** I move that subsection 17(2) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

“Restriction on agents

“(2) Except as permitted or required by or under a law and subject to the exceptions and additional requirements, if any, that are prescribed, an agent of a health information custodian shall not collect, use, disclose, retain or dispose of personal health information on the custodian’s behalf unless the custodian permits the agent to do so in accordance with subsection (1).”

**The Chair:** Questions or comments? If none, in favour of the amendment? Against, if any? None. The amendment is carried.

Amendment number 38, a government motion.

**Mr Fonseca:** I move that section 17 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:

“Responsibility of agent

“(3) An agent of a health information custodian shall notify the custodian at the first reasonable opportunity if personal health information handled by the agent on

behalf of the custodian is stolen, lost or accessed by unauthorized persons.”

**The Chair:** Questions or comments? None. Shall amendment number 38 carry? In favour? Against, if any? None. Amendment number 38 is carried.

Shall section 17 of schedule A, as amended, carry? In favour? Against, if any? Carried.

Section 18: You will notice that you have received an additional amendment by the government, so we’ll move on to PC motion number 39.

**Mrs Witmer:** In light of the discussion on managing of information, I would withdraw this motion.

**The Chair:** The motion has been withdrawn by Mrs Witmer. We’ll move on to motion 39.1, a government motion. You’ve just received this one.

**Mr Fonseca:** I move that section 18 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:

“Same

“(3.1) Subsection (3) does not apply to,

“(a) a disclosure pursuant to an implied consent described in subsection 20(4); or

“(b) a prescribed type of disclosure that does not include information about an individual’s state of health.”

**The Chair:** Questions or comments?

**Mrs Witmer:** Could you just explain what this is going to be doing?

**Mr Orr:** This relates to the amendment which is proposed to allow disclosures for the purpose of providing information to religious organizations for the purposes of visiting. Right now, in subsection 18(3) there is a restriction which says that a consent to a disclosure must be express and not implied in certain circumstances, for instance where the health information custodian is making a disclosure to a person who is not a health information custodian. This would normally prevent those kinds of implied disclosures from applying to disclosures to outside religious representatives. So in order to make that other amendment work and to say that you can go by an implied consent for giving information to a religious organization, you need to make the exception here, and that really relates to clause (a); and at the same time there’s an addition of clause (b), which allows other unforeseen types of disclosures with implied consent to be allowed, but it’s restricted. It’s only where it doesn’t include health-related information about the individual. So it’s where it’s name and contact information, that kind of thing.

**The Chair:** Other questions or comments?

**Mrs Witmer:** That’s fine. Thank you.

**The Chair:** If none, in favour of amendment number 39.1, a government motion? Against, if any? None. It is carried.

Amendment number 40, a government motion.

**Mr Fonseca:** I move subsection 18(6) of the Personal Health Information Act, 2003 be amended by striking out “under another act.”

**The Chair:** Questions or comments? If none, in favour of the amendment? Against, if any? None. The motion is carried.

Shall section 18 of schedule A, as amended, carry? Against, if any? None. It is carried.

Section 19: amendment number 41, a government motion.

**Mr Fonseca:** I move that section 19 of the Personal Health Information Act, 2003 be amended by adding after “to the health information custodian” “but the withdrawal of the consent shall not have retroactive effect.”

**The Chair:** Questions or comments? If none, in favour of the amendment? Against, if any? None. It is carried.

Amendment number 42, a government motion.

**Mr Fonseca:** I move that section 19 of the Personal Health Information Act, 2003 be amended by adding the following subsection:

“Conditional consent

“(2) If an individual places a condition on his or her consent to have a health information custodian collect, use or disclose personal health information about the individual, the condition is not effective to the extent that it purports to prohibit or restrict any recording of personal health information by a health information custodian that is required by law or by established standards of professional practice or institutional practice.”

**The Chair:** Questions or comments? If none, shall amendment number 42 carry? Against, if any? Seeing none, it is carried.

Shall section 19 of schedule A, as amended, carry? Against? None. Carried.

You have received another one, section 20, a government motion.

**Mr Fonseca:** I move that section 20 of the Personal Health Information Act, 2003 be amended by adding the following subsection:

“Implied consent, religious or other organization

“(4) If an individual who is a resident or patient in a facility that is a health information custodian provides to the custodian information about his or her religious or other organizational affiliation, the facility may assume that it has the individual’s implied consent to provide his or her name and location in the facility to a representative of the religious or other organization, where the custodian has offered the individual the opportunity to withhold or withdraw the consent and the individual has not done so.”

**The Chair:** Questions or comments? I don’t see any. In favour of the amendment? Against, if any? Seeing none, it is carried.

Shall section 20 of schedule A, as amended, carry? In favour? Against, if any? Seeing none, carried as amended.

On section 21 I have no amendments. Shall section 21 of schedule A carry? Against, if any? I see none. Carried.

Section 22: a government motion.

**Mr Fonseca:** I move that section 22 of the Personal Health Information Act, 2003 be amended by adding the following subsection:

“Requirements and restrictions on determination of incapacity

“22 (0.1) A health information custodian that determines the incapacity of an individual to consent to the collection, use or disclosure of personal health information under this act shall do so in accordance with any requirements and restrictions, if any, that are prescribed.”

1130

**The Chair:** Questions or comments? I see none. All in favour of the amendment? Against, if any? I see none. Carried.

Amendment 44, government motion.

**Mr Fonseca:** I move that the English version of subsection 22(1) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

“Determination of incapacity

“(1) If it is reasonable in the circumstances, a health information custodian shall provide, to an individual determined incapable of consenting to the collection, use or disclosure of his or her personal health information by the custodian, information about the consequences of the determination of incapacity.”

**The Chair:** Questions or comments? I see none. All in favour of amendment 44? Against, if any? I see none. Carried.

Shall section 22 of schedule A carry, as amended? All in favour? Against, if any? I see none. Carried, as amended.

Section 23: amendment 45, a government motion.

**Mr Fonseca:** I move that paragraph 1 of subsection 23(1) of the Personal Health Information Protection Act, 2003 be amended by striking out “in writing.”

**The Chair:** Questions or comments? I see none. All in favour of the amendment? Against, if any? I see none. Carried.

Shall section 23, as amended, carry? In favour? Against, if any? I see none. Carried, as amended.

Section 24: Shall section 24 carry? In favour? Against, if any? I see none. Carried.

Section 25: I have an NDP motion.

**Ms Martel:** I had proposed this motion based on a presentation we heard from Baycrest, a long-term-care facility. I’m advised by ministry staff that they haven’t had a chance to discuss this yet with the Public Guardian and Trustee, so we can’t agree to anything in this regard at this point. I take it they are going to go back and have that discussion and, if an amendment is required, it’s going to come forward at another time. I will withdraw it for the moment so they can have that discussion.

**The Chair:** Amendment 46 has been withdrawn for the moment by the NDP.

Seeing no other amendments, shall section 25 of schedule A carry? Against, if any? I see none. Carried.

Shall section 26 carry? Against, if any? I see none. Carried.



Shall section 27 carry? Against, if any? I see none. Carried.

Shall section 28 carry? Oh, sorry, I have an amendment. It's a government motion, amendment 47.

**Mr Fonseca:** I move that section 28 of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Requirement for consent

"28. A health information custodian shall not collect, use or disclose personal health information about an individual unless,

"(a) it has the individual's consent under this act and the collection, use or disclosure, as the case may be, to the best of the custodian's knowledge, is necessary for a lawful purpose; or

"(b) the collection, use or disclosure, as the case may be, is permitted or required by this act."

**The Chair:** Questions or comments? I see none. All in favour of the amendment? Against, if any? Carried.

Shall section 28 of schedule A, as amended, carry? Against? I see none. Carried, as amended.

Section 29: There are no amendments. Shall section 29 of schedule A carry? All in favour? Against? I see none. Carried.

Shall section 30 of schedule A carry? I see none against. Carried.

I'm up to section 31, amendment 48. It's an NDP motion.

**Ms Martel:** The purpose of putting forward the motion was to deal with the serious concerns we heard about fundraising through the course of the hearings, and I'm pleased that the government has responded and the government members won their battle with the minister Friday morning. Congratulations. I will withdraw my amendment because the government is going to fix this.

**The Chair:** The motion has been withdrawn.

We'll move on to PC motion 49.

**Mrs Witmer:** I guess this probably was the one issue that came up everywhere throughout the province, and that was the emphasis on the need to allow, particularly hospitals I guess, to continue with their fundraising activities, simply because there are not public government dollars available. We know that many of the capital projects and many of the additional services required to support patients only happen because of the ability of the hospital foundations to raise funds. I hope, when the government explains their motion, that it will adequately deal with the concerns that we had. So I will withdraw our motion.

**The Chair:** Motion 49 has been withdrawn by Ms Witmer.

We'll move on to amendment 50. It's a government motion.

**Mr Fonseca:** I move that section 31 of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Fundraising

"31(1) Subject to subsection (2), a health information custodian may collect, use or disclose personal health

information about an individual for the purpose of fundraising activities only where,

"(a) the individual expressly consents; or

"(b) the individual consents by way of an implied consent and the information consists only of the individual's name and the prescribed types of contact information.

"Requirements and restrictions

"(2) The manner in which consent is obtained under subsection (1) and the resulting collection, use or disclosure of personal health information for the purpose of fundraising activities shall comply with the requirements and restrictions that are prescribed, if any."

**The Chair:** Questions or comments? I see none. All in favour of the amendment? Against, if any? I see none. Carried.

Shall section 31 of schedule A carry, as amended? Against? I see none. Carried, as amended.

Section 32: We have no amendments. Shall section 32 of schedule A—

**Ms Martel:** My apologies, Mr Chair. Sorry about this. If I can just go back to the fundraising, I'm assuming that some groups saw the proposed language and are comfortable with it. Can I make that assumption or do you have to take your language back now and—sorry about that.

**Ms Appathurai:** We do have to take the language back but we're fairly comfortable with it because we had in the past, on Bill 159 and also on the MCBS draft, spoken with the Association for Healthcare Philanthropy, and from our discussions there, I would assume that they would be comfortable. But as I said, we have to go forward and discuss it in detail with them.

1140

**The Chair:** Is that satisfactory?

**Ms Martel:** Thank you.

**The Chair:** Now, shall section 32 of schedule A carry? In favour? Against, if any? Seeing none, carried.

Section 33: We have amendment 51. It's a PC motion.

**Mrs Witmer:** Mr Chair, in light of the discussion, I would withdraw that amendment.

**The Chair:** Thank you.

Shall section 33 carry? In favour? Against, if any? Carried.

Section 34: There is no amendment. Shall section 34, schedule A, carry? Against? Carried.

Section 35: We have two amendments. Government motion 52.

**Mr Fonseca:** I move that clause 35(f) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"(f) subject to the requirements and restrictions, if any, that are prescribed, the health information custodian is permitted under this or any other act or under an act of Canada to collect the information in a manner other than directly from the individual."

**The Chair:** Questions or comments? If none, in favour of the amendment? Against, if any? Carried.

Now amendment 53, a government motion.

**Mr Fonseca:** I move that section 35 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:

“Direct collection without consent

(2) A health information custodian may collect personal health information about an individual directly from the individual, even if the individual is incapable of consenting, if the collection is reasonably necessary for the provision of health care and it is not reasonably possible to obtain consent in a timely manner.”

**Mrs Witmer:** I have a little question here about “even if the individual is incapable of consenting.” Could you explain what type of circumstances might arise that would necessitate this amendment?

**Ms Perun:** With respect to the indirect collections, we’ve already built in a provision that would allow a provider to collect, say, from a relative who comes in with the incapable individual. But there will be cases or situations where there is no one with the incapable individual. Still, the provider should be in the position of obtaining general basic information from the individual: What’s your name? How are you feeling? What’s your problem? Without this amendment, there was really no such ability built into section 35. Therefore, this proposed amendment enables the provider to collect information also from the incapable person if they show up with no one.

**The Chair:** Satisfactory?

**Mrs Witmer:** Thank you.

**The Chair:** Any other questions or comments? If none, shall amendment 53 carry? Against, if any? I see none. Carried.

Shall section 35 of schedule A, as amended, carry? Against? I see none. Carried, as amended.

Section 36: amendment 54. It’s a PC motion.

**Mrs Witmer:** Yes, in light of earlier discussions, I would withdraw this amendment

**The Chair:** Amendment 54 has been withdrawn by Mrs Witmer.

We’ve move on to amendment 55. It’s a government motion.

**Mr Fonseca:** I move that clauses 36(1)(f) and (h) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

“(f) in a manner consistent with part II of this act, for the purpose of disposing of the information or modifying the information in order to conceal the identity of the individual;

“(f.1) for the purpose of seeking the individual’s consent, when the personal health information used by the custodian for this purpose is limited to the individual’s name and contact information;

“(h) for the purpose of obtaining payment or processing, monitoring, verifying or reimbursing claims for payment for the provision of health care or related goods and services.”

**The Chair:** Questions or comments? I see none.

Those in favour of the amendment? Against? I see none. It is carried.

Amendment 56 is a PC motion.

**Mrs Witmer:** Again, in light of earlier discussions, I would withdraw that amendment.

**The Chair:** So 56 has been withdrawn by Ms Witmer.

Shall section 36, as amended, be carried? Against? I see none. It is carried, as amended.

Section 37: amendment 57, a PC motion.

**Mrs Witmer:** Again, in light of earlier discussions, I would withdraw that.

**The Chair:** So 57 has been withdrawn by Ms Witmer.

I’ll move on to 58, an NDP motion.

**Ms Martel:** Before we get there, may I ask a question? This has to do—I think both the ones we were just dealing with—with issues around the lockbox provisions, which I think we have struggled with, and we’ve heard some various opinions. Can you tell us—because I gather that other jurisdictions have provisions and, I guess, to give me some comfort—about what is happening elsewhere that would just allow us to continue with what we have in place?

**Ms Appathurai:** Manitoba has a lockbox very similar to ours. We have been calling various people in Manitoba to see whether in fact there was a problem with this provision, whether there were concerns raised by either the medical community or patients, any other stakeholders. What we have found is that this has just been a non-issue for individuals in Manitoba for stakeholders and for the public. This worked very well. It’s not an issue. They’re looking at reviewing their legislation now. I had asked the question in the review of legislation if this had been an issue, and they have said to us no, it’s not.

**Ms Martel:** Can I just ask further to that, because there was certainly the more philosophical issue about whether it impeded quality of care. We had some very specific concerns raised by the Group Health Centre in Sault Ste Marie on a more technical level in terms of their technology. Has that been an issue with any of the provider groups?

**Ms Appathurai:** The answer to that is no. Certainly it has not been raised in Manitoba, where they have this similar provision. In Alberta, there was a requirement for consent for electronic transfer of information, and that has been withdrawn. The legislation has been amended to remove that requirement. The explanation that was given is that fewer than 1% of individuals used it. It was not a big issue, and they didn’t feel that there was a need for it.

In terms of the implications for cost in Ontario, we’ve consulted with some technicians in that area who have told us that masking information is not expensive at all, indicating that there’s a flag that’s not expensive at all. I remember the suggestion that was raised was that some aspects of information should be able to be locked and others not. The individuals whom we have spoken to initially on this have said from a technological point of view, they don’t see it as very difficult nor expensive, that you can buy a software program to do this.

In terms of implications for health care, we have to remember that currently in Ontario, if you go to your doctor and say, “I do not want this bit of information



being forwarded to this specialist, who happens to be related to me," that is a situation that you and your doctor have to discuss. It's a discussion that takes place currently. I assume that, as in Manitoba, those same discussions will take place.

1150

**The Chair:** Thank you, Carol.

We'll move on to amendment number 58. It's an NDP motion.

**Ms Martel:** This was put in in the first place to try and deal with some of the concerns raised by faith communities. I trust those concerns will be dealt with in the changes that the government is proposing, so I'll withdraw the motion.

**The Chair:** Motion 58 has been withdrawn by Ms Martel. We'll move on to 59. It's a PC motion.

**Mrs Witmer:** Before I speak to this motion, I wonder if the government representatives can tell me whether or not the concerns that have been identified by stakeholders and the amendment we proposed have been addressed.

**The Chair:** Can someone from the staff clarify?

**Ms Perun:** In the government motions there is no specific motion that addresses this issue as has been put forward by this PC motion. With respect to disclosure without consent for the purposes of infection control procedures, there are currently provisions in the bill that allow disclosure to the chief medical officer of health if permitted under the Health Protection and Promotion Act.

Also, if there were requirements to provide patient information to an employer as required under the Occupational Health and Safety Act, that requirement is not affected by this bill.

Finally, with respect to general disclosure, if there's a concern that somehow there would be harm to someone else or to the individual, there is already, in the draft of Bill 31, 39(1), which speaks to enabling a custodian to disclose if there are reasonable grounds to believe the disclosure is necessary for the purpose of eliminating or reducing significant risk of serious bodily harm to a person or group of persons. So there is no specific new motion dealing with this issue, but there are provisions in the bill that do address certain concerns that were raised by these provisions.

**Mrs Witmer:** Is there anything here that is not covered?

**Ms Perun:** With respect to clauses (a) and (b), the express instruction, we could prescribe in regulation that express instruction must be in writing, but right now express instruction could be oral or written. Second, as to when it is provided is not specifically addressed. That would be clause (b).

**Mrs Witmer:** I will withdraw that amendment, then.

**The Chair:** Thank you, Halyna. Thank you, Ms Witmer. So amendment number 59 has been withdrawn.

We'll move on to amendment number 60. It's a government motion.

**Ms Martel:** My apologies, because I think you're moving to section 37(4). I wanted to raise an issue above that. This has to do with the facility that provides health care, because I continue to struggle with some of the concerns we heard, particularly from the Canadian Mental Health Association, that the mere disclosure of a particular wing in a hospital would give you some medical information about that patient that you might not get anywhere else. I've had an initial discussion with counsel about this, and I just want to raise it again. I believe it was in the Canadian Mental Health Association's presentation—I could be wrong, so if I'm wrong, I apologize—but there certainly was a suggestion that perhaps you could limit this further to state that the disclosure would only happen if the patient was severely injured or if their life was at risk, and second, that the health care custodian would try and contact a substitute decision-maker if the patient was incapable of consenting.

I understand that this is a permissive section, that the hospital or institution does not have to disclose information. However, I guess I'd rather be in a position where if they are disclosing in a permissive nature we are restricting what they're disclosing to those kinds of circumstances.

I'd like to ask the government to consider this again. There's obviously not a motion before us, so it wasn't your intention to make any change, but I'd appreciate if we could have another run at this to see what would be permitted and if we could move forward with more of a limitation that would say that the disclosure may still happen, but only in the instance where someone is severely ill, their life is at risk and efforts are also therefore made to contact a substitute decision-maker, if one exists, in the case of someone presenting with mental health illness.

**The Chair:** Thank you. We'll move on to amendment number 60. It is a government motion.

**Mr Fonseca:** I move that clause 37(4)(b) of the Personal Health Information Protection Act, 2003 be amended by adding after "to be deceased" "and the circumstances of death, where appropriate."

**The Chair:** Questions or comments? If none, shall the amendment carry? In favour? Against? I see none against, so it is carried as presented.

Amendment number 61 is a government motion.

**Mr Fonseca:** I move that clause 37(4)(c) of the Personal Health Information Protection Act, 2003 be amended by striking out "having regard to any views that the individual previously expressed that are known to the custodian" at the end.

**The Chair:** Questions or comments? I see none. Those in favour of the amendment? Against, if any? I see none. Carried.

Shall section 37 of schedule A, as amended, carry? Against? I see none. Carried as amended.

It being two minutes before 12 o'clock, I think we should adjourn and be back for 1 o'clock sharp.

*The committee recessed from 1156 to 1301.*

**The Chair:** We'll resume immediately. We're up to motion number 62. It's a government motion, section 38.

**Mr Fonseca:** I move that clauses 38(1)(a) and (c) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"(a) for the purpose of determining or verifying the eligibility of the individual to receive health care or related goods, services or benefits provided under an act of Ontario or Canada and funded in whole or in part by the government of Ontario or Canada or by a municipality;" ...

"(c) to a prescribed person who compiles or maintains a registry of personal health information for purposes of facilitating or improving the provision of health care or that relates to the storage or donation of body parts or bodily substances."

**The Chair:** Questions or comments? None. Those in favour? Against, if any? The motion is carried.

Now we'll move on to motion number 63. It's an NDP motion.

**Ms Martel:** In order to respond to concerns by Cancer Care Ontario, the Ontario Joint Replacement Registry and the Cardiac Care Network, I move the next three amendments so that they would be clearly outlined in the bill in the section under registries. The government is going to correct me if I'm wrong. You are going to continue to work with them and try to do this by regulation, I gather. Can you just tell me why you want it in regulation versus being part of the actual bill, so that they are specifically referenced.

**The Chair:** Carol?

**Ms Appathurai:** Cancer Care Ontario is an organization that has been in flux and may continue to be in flux. Putting them in the regs rather than carving them in stone in the legislation gives us the flexibility to adapt to changing needs. In terms of the Ontario Joint Replacement Registry, that is not an entity unto itself and therefore it would not really be appropriate to list it in the legislation. The Cardiac Care Network is a registry rather than a health information custodian. It does not provide health care. It's more appropriately listed as a registry through the regulations. In sum, the regulations give us the flexibility to respond to the changing nature of the organizations and to list those which are more appropriately listed as a registry rather than a health care custodian.

**Ms Martel:** Based on that, and the ongoing discussions that are going to occur with all of those groups, I would withdraw those three motions that refer to those three groups.

**The Chair:** So motions 63, 64 and 65 have been withdrawn by Ms Martel.

We'll move on to motion number 66. It's a PC motion.

**Mrs Witmer:** That was to address some of the concerns of the [inaudible]. So I'm going to withdraw that.

**The Chair:** Motion number 66 has been withdrawn by Mrs Witmer.

Shall section 38, as amended, carry? In favour? Against? I see none, so section 38, schedule A is carried, as amended.

Motion 67 under section 39, a PC motion.

**Mrs Witmer:** In light of discussions, I'm going to withdraw that motion.

**The Chair:** Motion 67 has been withdrawn by Mrs Witmer. We'll move on to motion 68.

**Mrs Witmer:** Regarding motion 68, there were some concerns expressed here about disclosure, so we had a recommendation here that would move that subsection 39(2) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted—the government also has a motion, but what I don't know at this point in time is if the government motion there would take into consideration the concerns we've highlighted.

**Ms Perun:** No.

**Mrs Witmer:** It wouldn't. OK.

"Disclosures related to care or custody

"(2) A health information custodian may disclose personal health information about an individual to the head of a penal or other custodial institution in which the individual is being lawfully detained upon the request of the institution or facility or to the officer in charge of a psychiatric facility within the meaning of the Mental Health Act in which the individual is being lawfully detained, to assist the institution or the facility in making a decision concerning the placement of the individual into custody, detention, release, conditional release, discharge or conditional discharge under part IV of the Child and Family Services Act, the Mental Health Act, the Ministry of Correctional Services Act, the Corrections and Conditional Release Act (Canada), part XX.1 of the Criminal Code (Canada) or the Youth Criminal Justice Act (Canada).

"Criteria for making disclosure

"(3) A health information custodian is not required to make a disclosure under subsection (2) unless the requesting party indicates to the health information custodian,

"(a) the decision that is being contemplated;

"(b) the nature of the information that is necessary for the decision;

"(c) the reason why the information is necessary; and

"(d) how the information will be used or disclosed in making the decision concerning placement."

**The Chair:** Questions or comments on the amendment?

**Mr Fonseca:** It's already limited by section 29, the general limiting principle.

**The Chair:** Other comments?

**Ms Martel:** Sorry, I don't understand that. Can I have some clarification, please?

1310

**Ms Perun:** With respect to subsection 39(3), the new part is "Criteria for making disclosure." There are two points to be made here. With respect to the first line, "A health information custodian is not required to make a



disclosure ... unless," subsection 39(2) is merely permissive, so there is no requirement in the first instance.

As far as how the custodian exercises his or her discretion to disclose this information, that exercise of discretion generally is governed by the rule set out in section 29 of the legislation, which is the general limiting principle that speaks to all custodians when making decisions around collection, use and disclosure of personal health information. In other words, section 29 provides that "A health information custodian shall not collect, use or disclose personal health information if other information will serve the purpose," for starters; and, secondly, shall only disclose, collect or use that amount of personal health information that is reasonably necessary to meet the requirement.

In other words, the criteria in subsection 39(3) in a sense apply to all disclosures without consent. In terms of permissible disclosures without consent, they're all subject to section 29, that limit on not disclosing more than you have to and not disclosing PHI when other information will serve the purpose. That's one thing.

**Mr Orr:** As Halyna pointed out, subsection 39(2) is a "may." It says, "A health information custodian may disclose." So if we have language in subsection 39(3) that says, "A health information custodian is not required to make a disclosure under subsection (2) unless the requesting party indicates" and it lists a number of things, the implication may be that if indeed all those items are provided, then it is a required disclosure, because it says, "is not required ... unless," so presumably, if you meet all the criteria following, then it becomes a required disclosure. I don't believe it was the intention here to turn this into a required disclosure.

**The Chair:** Other comments or questions? If none, we will proceed with the vote. All those in favour of Ms Witmer's amendment, please raise your hands. One, two. All those against? One, two, three, four, five, six; abstain.

**Ms Martel:** It probably would have made some sense to operate with the next one, which is almost the same, so that I could clearly understand what the differences are.

**The Chair:** This motion was defeated, though.

**Mrs Witmer:** That's why I wanted to know how this compared to the government motion.

**The Chair:** Motion number 68 was defeated.

We'll move on to motion 69. It's a government motion.

**Mr Fonseca:** I move that subsection 39(2) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Disclosures related to care or custody

"(2) A health information custodian may disclose personal health information about an individual to the head of a penal or other custodial institution in which the individual is being lawfully detained or to the officer in charge of a psychiatric facility within the meaning of the Mental Health Act in which the individual is being lawfully detained for the purposes described in subsection (3).

"Same

"(3) A health information custodian may disclose personal health information about an individual under subsection (2) to assist an institution or a facility in making a decision concerning,

"(a) arrangements for the provision of health care to the individual; or

"(b) the placement of the individual into custody, detention, release, conditional release, discharge or conditional discharge under part IV of the Child and Family Services Act, the Mental Health Act, the Ministry of Correctional Services Act, the Corrections and Conditional Release Act (Canada), part XX.1 of the Criminal Code (Canada), the Prisons and Reformatory Act (Canada) or the Youth Criminal Justice Act (Canada)."

**The Chair:** Questions or comments?

**Ms Martel:** I still don't understand why some of this information might be required. I can understand based on the presentation we heard from the Canadian Mental Health Association, Elgin that they—not a young offenders facility but they, as a community-based agency—might need to have some information in order to determine placement of their services. What I still don't clearly understand is, I guess, (b). If you're not talking about a health care need for the client, why is that information necessary for placement purposes? If there is not a health problem in front of us, why do all the groups need to know that?

**Ms Appathurai:** I can certainly speak to the concerns of the Ministry of Correctional Services. They believe that they need to know that information because they have a responsibility for the inmate, that some of the health concerns of the inmate may impact on either staff or other prisoners, and therefore it's important for them as the organization that's responsible for the care of this individual inmate and all the inmates to have that information. This section allows the doctor the discretion to determine what information should be disclosed to the institution.

**Ms Martel:** But in this case we're not questioning—except perhaps for someone who is being detained in a mental health facility, there's not a determination that people can't provide that consent on their own, correct? So they're not even being asked for their consent, and it looks like the reason is that they're being detained. So they lose some rights under law that other people would normally have. Am I correct? Do you know where I'm going with this?

**Ms Appathurai:** Yes. This is the subject of much discussion and debate. If the legislation had made it a requirement of disclosure, the individual would have lost all their rights, but in this situation the individual is still able to tell the doctor, "Please do not disclose this information."

**Ms Martel:** And yet my concern would be that we heard in presentations that this may well be a more common than uncommon practice. If the practice is that the information is being released, regardless of whether or not consent has been declined, isn't that something we should be worried about and trying to remedy?



**Mr Orr:** Before answering your question I'd just like to place this in the context that this is an amendment being proposed to a portion of the bill. The two changes from what's there in the bill are adding clause (a) and then adding the Prisons and Reformatory Act. So the permitted disclosure with respect to the placement of the individuals into custody, detention, release, conditional release etc is there in the bill already, and in fact, that's been there in drafts of privacy legislation, in Bill 159 and a number of bills.

You asked about what's the difference between somebody inside one of these institutions and why shouldn't they have the rights of somebody outside. They still have control over the collection, use and disclosure of their personal information for the purposes of providing health care. These provisions speak to ancillary purposes, speak to the fact that this person is in a facility. They are not there voluntarily. They're there and the facility, as a result, must take responsibility for making the services they need available to them. In the actual delivery of those services the person is going to have to provide consent in a similar way that they would on the outside.

1320

This provision recognizes—and I think we've really made a balance here, because it could have been a much more open provision also. It gives the ability for the information to be provided that's necessary for the purpose of the provision of health care to the individual, the logistical arrangements that are necessary, and for the placement of the individual inside the custody that recognizes that people with certain health care needs or conditions may need to be placed in a certain placement in the institution; for instance, in a placement where the services they require will be available to them. In terms of actually connecting with those services and providing those services, that is something that will involve the person's consent, but in terms of placing them where those services will be available to them, it's very important that the institution have the information to do that.

**Ms Martel:** I would understand that if it was clear that they needed the services, and then I would agree with your subsection (a) that there is a need for health care to be delivered or to be received. The information would clearly have to be disclosed. The clients themselves would understand that because they need health care. It's in the situation where it's not evident that there is health care of any nature that is required, and yet a health care custodian may release information about someone's health status—even though health care is not required. It just seems to me, as I read it, that we're allowing that to happen because the individual in question is incarcerated in some form. We wouldn't make that requirement for a member of the general public who's not being incarcerated. That's the difficulty I have. It's not a new difficulty, because I didn't agree with it as it's been presented in the bill from the start. I have tried to raise questions around it. I like your clause (a); (b) still gives me no comfort because it's essentially as we have in the bill, and I have

not agreed with that provision from the start. I appreciate your trying to explain this to me, but I think I still am nervous about where it takes us.

**Mr Orr:** I would just add one more point, and that is just to refer to the general limiting principles in section 29. Those need to be read in conjunction with all the permitted collections, uses or disclosures. So it's only the amount of information that is necessary for that purpose. That provides a significant limitation.

**Ms Martel:** I understand that. My concern is—if I may, and then I'll conclude—for some of these individuals, that disclosure, if it does happen, puts them in a much more precarious situation than someone in the general public who's not incarcerated. If you're in jail and a health care custodian discloses to the head of that institution that you're HIV-positive, I think that puts you, as an individual, in a much more precarious situation than other inmates. Maybe there isn't a way to get around it, but I don't think I can agree with this. I just think there has to be a way that there is some protection. Yes, if that person needed treatment immediately, I could understand that. But a disclosure of that nature for no reason related to health care could be really damaging.

**Ms Perun:** Just to add to this, with respect to the placement of the individual into custody, or release or conditional release, the other thing we've heard is that currently, for example, where the person has offended and is now considered for release into the community, has served their time but has undergone some therapy or participated in a program, the decision-makers who actually are making the decision to release the person into the community need to know that information. They would need to know that whether or not the person has consented. That is effectively what we have heard. Therefore, in that instance, that is the kind of information that is contemplated in clause (b) for the placement of the individual. Even to be discharged into the community, there has to be some kind of check and balance that, yes, the person has served their time, they have undergone a certain program, whatever it may be, and they're ready to go out into the community. That's also one of the purposes of clause (b).

**The Chair:** Is that satisfactory? Any other comments or questions? If none, those in favour of amendment number 69, a government motion, raise your hand? Against? One against. It is carried.

Shall section 39 of schedule A, as amended, carry? Against? One against. Carried.

We'll go on to amendment number 70 under section 40, a government motion.

**Mr Fonseca:** I move that clause 40(a) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

“(a) for the purpose of a proceeding or contemplated proceeding in which the custodian or the agent or former agent of the custodian is, or is expected to be, a party or witness, if the information relates to a matter in issue in the proceeding or contemplated proceeding;”

**The Chair:** Questions or comments?



**Ms Perun:** There's just a clarification. The motion actually reads "possible proceeding," but there is an error. The first line is "contemplated proceeding," and so "possible proceeding" should have been "contemplated proceeding."

**The Chair:** Thank you. Other comments or clarification? If none, all those in favour of the amendment? Against, if any? It is carried.

Amendment 71, government motion.

**Mr Fonseca:** I move that section 40 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:

"Disclosure by agent or former agent

"(2) An agent or former agent who receives personal health information under subsection (1) or under subsection 36(2) for purposes of a proceeding or contemplated proceeding may disclose the information to the agent's or former agent's professional adviser for the purpose of providing advice or representation to the agent or former agent, if the adviser is under a professional duty of confidentiality."

**The Chair:** Questions or comments on amendment 71? If none, those in favour, please? Against, if any? Carried.

Shall section 40 of schedule A carry, as amended? Against, if any? It is carried.

Section 41: amendment 72, government motion.

**Mr Fonseca:** I move that section 41 of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Transfer of records

"41(1) A health information custodian may transfer records of personal health information about an individual to the custodian's successor if the custodian makes reasonable efforts to give notice to the individual before transferring the records or, if that is not reasonably possible, as soon as possible after transferring the records.

"Same

"(2) In the prescribed circumstances, a health information custodian may transfer records of personal health information about an individual to the Archives of Ontario or to a prescribed person whose functions include the collection and preservation of records of historical or archival importance, if the disclosure is made for the purpose of that function."

**The Chair:** Questions or comments? If none, those in favour of the amendment, please? Against, if any? It is carried.

Shall section 41, as amended, carry? Against? It is carried?

Section 42: amendment number 73, an NDP motion.

**Ms Martel:** I moved this particular motion to respond to the concerns that the Ombudsman raised in his presentation, particularly about the potential of having information blocked to him when he was trying to have investigations undergone, the need to get express consent. I understand from ministry staff that that issue is going to be dealt with in a government motion that's

coming by a change to the Ombudsman Act itself to make that clear. So I will withdraw that amendment.

**The Chair:** Motion number 73 has been withdrawn.

I'll move to amendment 74, a government motion.

1330

**Mr Fonseca:** I move that clause 42(1)(g) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"(g) subject to the requirements and restrictions, if any, that are prescribed, to a person carrying out an inspection, investigation or similar procedure that is authorized by a warrant or by or under this act or any other act of Ontario or an act of Canada for the purpose of complying with the warrant or for the purpose of facilitating the inspection, investigation or similar procedure;"

**The Chair:** Questions or comments? I see none. Those in favour of the amendment? Against, if any? I see none. It is carried.

Shall section 42, as amended, carry? All in favour? Against? It is carried.

Section 42.1: motion 75, a PC motion.

**Mrs Witmer:** This again refers back to chaplains and that issue has been addressed, so I will withdraw it.

**The Chair:** So amendment number 75 has been withdrawn by Ms Witmer.

We'll move on to section 43, amendment number 75, a PC motion.

**Mrs Witmer:** I move that subsections 43(12), (13) and (14) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Transition

"(12) Despite anything in this section, a health information custodian that lawfully disclosed personal health information to a researcher for the purpose of conducting research in the five-year period before the day this section comes into force may continue to disclose personal health information to the researcher for the purposes of that research for a period of five years after the day this section comes into force.

"Same, use

"(13) Despite anything in this section, a health information custodian that lawfully used personal health information for the purpose of conducting research in the five-year period before the day this section comes into force may continue to use personal health information for the purposes of that research for a period of five years after the day this section comes into force.

"Repeal

"(14) Subsections (12) and (13) are repealed on the fifth anniversary of the day they come into force."

This really was dealing with that transition period. As you know, there was a request from the teaching hospitals, and also Baycrest indicated an interest here. The fact is that many of these research projects take and are five years in length, as they do not just do the research project but they do their clinical trials. If we don't have this five-year period, there may be a need for some of these clinical trials and some of the research projects to be stopped or have to undergo extensive revision if we

don't increase the number of years of transition to five years.

**The Chair:** Questions or comments?

**Mr Fonseca:** We feel that five years is too long and that two years would be a good compromise.

**The Chair:** Other comments or questions?

**Mrs Witmer:** Again, if people take a look at research projects that are done by the medical community, particularly the teaching hospitals, you'll see that—if you don't feel you can support the five years, I think we at least have to take a look at three years. Otherwise some of this research, which people are conducting basically to help you and me and others have a better quality of life, and new tests for drugs and services and programs—they're going to have to be stopped, and unfortunately there's going to be a lot of time and money wasted if people are not allowed to proceed. It certainly can have an impact on the quality of life of some individuals who may be impacted by that short time period of only two years.

**The Chair:** Other comments?

**Ms Perun:** With respect to the research stopping, I think the important thing to note too is that the transition period contemplates that the researcher would, first of all, need to make sure they have a research ethics board approval for the research. So the research can still go on, even at that time, provided they have research ethics board approval and that the agreement they enter into with the custodian reflects the requirements in this legislation. Basically, it would just allow a time frame where the researcher could revisit the agreement that they already have in place or, if they don't have an agreement in place, to enter into it.

I don't think there's an idea that somehow research will stop. It's just that the requirements may have to be revisited: Did they get the research ethics board approval, and do they have a research agreement in place that is reflective of the language of the bill?

**Mrs Witmer:** If that's the case, why are you recommending two years? Why have you made a change, if you're assuming that things are OK as they are if they've taken the appropriate steps?

**Ms Perun:** It's basically just to give a little bit more flexibility in order to do the research agreement. Sometimes the research agreements that we enter into in the government take a bit longer than a year to finalize certain things. It gives a little bit more flexibility, but it's not as long as five years.

**Mrs Witmer:** I guess the fact that the government is prepared to change the time indicates that there is an acknowledgement that this can certainly create some problem and that there is a need for some flexibility. If we can't support five, I certainly would recommend three.

**Ms Wynne:** May I just ask a question? Is this one of the sections that we've talked with any outside people about, on whether—one, two, three, five?

**Ms Perun:** No.

**The Chair:** Thank you. Other comments or questions? If none, we'll vote on the PC amendment. In favour of the Mrs Witmer's amendment, please raise your hand. Three. Against? Six. The motion is defeated.

Number 77, a government motion.

**Mr Fonseca:** I move that subsections 43(12), (13) and (14) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Transition

"(12) Despite anything in this section, a health information custodian that lawfully disclosed personal health information to a researcher for the purpose of conducting research in the two-year period before the day this section comes into force may continue to disclose personal health information to the researcher for the purposes of that research for a period of two years after the day this section comes into force.

"Same, use

"(13) Despite anything in this section, a health information custodian that lawfully used personal health information for the purpose of conducting research in the two-year period before the day this section comes into force may continue to use personal health information for the purposes of that research for a period of two years after the day this section comes into force.

"Repeal

"(14) Subsections (12) and (13) are repealed on the second anniversary of the day they came into force."

**The Chair:** Questions and comments?

**Mrs Witmer:** I'd like to move an amendment to this motion that the two years become three years and that it be repealed on the third anniversary of the day.

**The Chair:** There's an amendment to this amendment moved by Mrs Witmer, that the period will be moved to three years instead of two years—

**Clerk of the Committee:** And it's repealed on the third anniversary.

**The Chair:** —and repealed on the third anniversary, yes. Questions or comments?

**Ms Martel:** If I might make a point on this, one of the other concerns we heard was whether or not, with some of these groups and institutions, there was an effective, legitimate research ethics board actually in place and operating. There are motions later on to define that in regulation. My concern would be, if there really isn't such a body in place and the government is going to move to establish some criteria that everybody has to live by, that process in itself is going to take some time. I know you want an open consultation process. I think there's a number of people you're going to have to talk to about that.

1340

I just think there will be some time and some delay that we should take into consideration, especially in the case where there really isn't a research ethics board that was functioning that someone might have to go back to to try to get some consent or try to change terms and conditions.



I guess I just leave that as a caution. I rather like moving to an additional year, just because we don't have anything concrete about research ethics boards: what they look like, how they're going to be constituted in places where they aren't. I think the government wants to have at least a base level to work from. That's going to take some time and then additionally it would take some time to get those into place.

**The Chair:** Any other comments on the sub-amendment?

**Ms Wynne:** I don't know if it helps at all, but I think the government is considering entertaining a motion to move to January 1 in terms of implementation. I don't know if that helps. It gives some more time. I just wanted to offer that up as a possible help.

**Mrs Witmer:** That isn't going to change the impact of this, I don't believe. I think it's important to remember that the timelines of many of the research agreements are three to five years. As far as clinical trials are concerned, they frequently run for three years. What we're trying to do is to give these projects that are underway at the passage of this legislation the provision of a longer grandparenting provision, and that it's not going to require more re-evaluation and time spent by someone.

The University Health Network raised this, the Centre for Addiction and Mental Health, the Ontario Council of Teaching Hospitals and the Ontario Hospital Association.

**The Chair:** Any other comments? If not, we will vote on the sub-amendment, the amendment to the amendment.

Ms Wynne, do you have a question?

**Ms Wynne:** I think three years is fine.

**The Chair:** So we'll vote on that.

**Mr Albert Nigro:** Before we vote—my name is Albert Nigro and I'm legislative counsel—I want to be clear on what you're voting on. In subsection 43(12), is it "three-year period" and "three years after the day"? The same question applies to subsection (13). In other words, there are two time periods in both those subsections. I want to know if both are changing to three years.

**Ms Wynne:** Yes. It would "three-year period before the day this section comes into force," and "for a period of three years after the day."

**The Chair:** So in subsection (13), the second-last line, "for a period of three years after the day this section comes into force." And "Repeal," subsection (14), "Subsections (12) and (13) are repealed on the third anniversary of the day they came into force."

We will vote—

**Ms Wynne:** So we're going to vote on Mrs Witmer's amendment of this amendment?

**The Chair:** That is right. Those in favour of the amendment to the amendment, please raise your hand. Unanimously supported.

**Mr Fonseca:** There are four different spots where "two years" comes up and that it would be changed to "three years."

**The Chair:** Are there other places?

**Mrs Witmer:** There are five spots.

**The Chair:** We will vote on the amendment, as amended. On amendment number 77, we will vote on the amendment to the amendment. In favour of the amendment, as amended? Carried.

Shall section 43 of schedule A, as amended, carry? In favour? Carried.

Section 43.1: amendment number 78, an NDP motion.

**Ms Martel:** I'm looking at the government motion that's coming next and I would say that CCO, in a number of the concerns raised, also, I thought, made a legitimate point that health information might be needed to be disclosed for planning and management. So included there were compiling statistics, carrying out research, etc.

As I run through the government amendment quickly, I'm hoping that part of that concern that they raised is now going to be dealt with in the next motion that's coming from the government. If not, you can tell me otherwise. But if it is, then I would withdraw the motion. So, Carol, if you wanted to speak to it first, that would be great.

**The Chair:** So Ms Martel is withdrawing this motion, number 78.

**Ms Martel:** If I could hear her explanation first, please, Chair, before I do that.

**The Chair:** Oh, you want to hear some explanation? Yes. Ministry staff?

**Ms Appathurai:** If you look at the government motion, you'll see that we are putting forward a provision that would allow us to prescribe an entity that has practices and procedures in place that are privacy-protected. This entity would be collecting information. We're giving permission to a health information custodian to disclose to this prescribed entity for the purposes of analysis or compiling statistical information, all that Cancer Care Ontario is requesting.

However, what we don't have there and what is in your amendment is the requirement. Cancer Care Ontario would like to require health information custodians to disclose. They're not making it permissive; they're requiring that disclosure.

Where a custodian refuses to comply, Cancer Care Ontario can make a complaint to the commissioner. This addresses the concern that Cancer Care Ontario has that health information custodians, hospitals, for example, for whatever their reasons, are on occasion reluctant to disclose information. Hospitals may have in that situation a very good reason for not disclosing. Custodians would find this required disclosure quite offensive, and more than that, it's also inconsistent with the privacy act.

A requirement for custodians to disclose to Cancer Care Ontario is more appropriately placed in the Cancer Act. At this time, the Cancer Act is permissive. If Cancer Care Ontario wants to require disclosures by health information custodians, an amendment to that act would serve that purpose.

**Ms Martel:** Is it the government's intention to bring that forward? Because as I listen to their argument, I found it difficult to understand where they would have a mechanism for appeal then, if a hospital decided not to

disclose information. You said there might be a good reason for that, and there may, except if there's not an independent appeal mechanism, neither party, I think, would feel satisfied about the lack of disclosure—certainly CCO, from its point of view—that it had some other authority it could appeal to, to either get the reason or to get that determination overturned. So I hear how that might be resolved, but I did not hear that the government is bringing an amendment forward to the Cancer Act to make that happen.

**Ms Appathurai:** To my knowledge, I'm not aware of any activity in that area, but I could certainly go back and get information on that.

**Ms Martel:** If that's not coming forward, I just need to know how we deal with what I thought—maybe I'm wrong, but I thought it was a legitimate concern that was being expressed by Cancer Care Ontario that this is what's happening to them now in practice. I'm not sure what reason a hospital would have; I'd be interested to know that, but it seems to me that is an outstanding issue that needs to be resolved, so if you could have another look at that.

I would withdraw the amendment, but I would say that I remain concerned about how we deal with that particular concern that was reflected by CCO to us.

Mr Chair, I withdraw the amendment.

**The Chair:** Very good. Thank you. The amendment has been withdrawn by Ms Martel.

We'll move on to the next one, amendment 79, a government motion.

1350

**Mr Fonseca:** I move that the Personal Health Information Protection Act, 2003 be amended by adding the following section:

“Disclosure for planning and management of health system

“43.1 (1) A health information custodian may disclose to a prescribed entity personal health information for the purpose of analysis or compiling statistical information with respect to the management of, evaluation or monitoring of the allocation of resources to or planning for all or part of the health system, including the delivery of services, if the entity meets the requirements under subsection (3).

“Exception

“(2) Subsection (1) does not apply to,

“(a) notes of personal health information about an individual that are recorded by a health information custodian and that document the contents of conversations during a private counselling session or a group, joint or family counselling session; or

“(b) information that is prescribed.

“Approval of prescribed entity

“(3) A health information custodian may disclose personal health information to a prescribed entity under subsection (1), if the entity has in place practices and procedures to protect the privacy of the individuals whose personal health information it receives and to maintain the confidentiality of the information and the

commissioner has approved those practices and procedures.

“Review by commissioner

“(4) The commissioner shall review the practices and procedures of each prescribed entity every two years from the date of its approval and advise the health information custodian whether the entity continues to meet the requirements of subsection (3).

“Duties of prescribed entity

“(5) Subject to any requirements or restrictions that are prescribed, if any, an entity that receives personal health information under subsection (1) shall not use or disclose the personal health information except for the purposes for which it received the personal health information.”

**The Chair:** Questions or comments? I see none. Those in favour of the number 79 amendment? Against, if any? Seeing none, it is carried.

We'll move on to section 44. I see no amendment on this one. Shall section 44 of schedule A be carried? Against, if any? Seeing none, it is carried.

Section 45: Shall section 45 of schedule A carry?

**Ms Martel:** You have an amendment.

**The Chair:** Not on this one. There's a new section on the other one. Should it carry the way it is? There's no amendment.

**Mrs Witmer:** As is?

**The Chair:** As is, yes. Thank you.

Section 45.1.

**Mrs Witmer:** We've discussed this, and based on the information I've been provided with, I would withdraw this.

**The Chair:** So this has been withdrawn by Mrs Witmer.

We'll move on to section 46. Shall section 46 of schedule A carry? Against, if any? I don't see any. It is carried.

Section 47: amendment number 81, a government motion.

**Mr Fonseca:** I move that section 47 of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

“Restrictions on recipients

“47(1) Except as permitted or required by law and subject to the exceptions and additional requirements, if any, that are prescribed, a person who is not a health information custodian, and to whom a health information custodian discloses personal health information, shall not use or disclose the information for any purpose other than the purpose for which the custodian was authorized to disclose the information under this act or as necessary in the course of carrying out a statutory or legal duty.

“Extent of use or disclosure

“(2) Subject to exceptions and additional requirements, if any, that are prescribed, a person who is not a health information custodian, and to whom a health information custodian discloses personal health information, shall not use or disclose more of the information than is reasonably necessary to meet the purpose of the use or



disclosure, as the case may be, unless the use or disclosure is required under an act of Ontario or Canada.

**“Freedom of information legislation**

“(3) Except as prescribed, this section does not apply to an institution within the meaning of the Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Protection of Privacy Act that is not a health information custodian.”

**The Chair:** Are there any questions or comments?

**Mrs Witmer:** I guess there are some questions. If we take a look at how this might apply to the regulated health colleges and we take a look at the wording “except as permitted or required by law” in subsection 47(1), and then we take a look at the last line, “as necessary,” and then we take a look how this information can be used or disclosed, the interpretation might well be—the question I would ask you is, if, for example, a hospital were going to terminate the employment of a physician, according to the letter of the law, does this mean that the only information they would be required to give to a college would be that the physician has been terminated, or does this also require that they would report to the college that this physician has been terminated because of, for example, a problem with addiction or sexual abuse? When we talk about the use of the information, does this section allow the registrar, who would become the owner of this information—what can he or she do with the information? So I guess there are some questions here as to how this might or might not impact on the colleges.

**Ms Perun:** For starters, this provision has also been reviewed by the Federation of Health Regulatory Colleges of Ontario. To be frank, I think that their preference would have been to have a complete carve-out for regulated health colleges. But in terms of the language and the fact that in subsection 47(1) a custodian may disclose, and then the recipient may use the information received as necessary in the course of carrying out a statutory or legal duty, that in fact is intended to capture the regulated health colleges’ work in its entirety. If they receive the information, they can certainly use it for the purpose of carrying out a statutory or legal duty.

The reason why we didn’t want to just limit this provision to the regulated health professions is because it has also come to our attention that, for example, children’s aid societies would need some further flexibility too, in terms of the use of the information once they’ve received it. So once you’ve received it, subsection (1) speaks to the recipient and says, “You can in fact use it to carry out a statutory or legal duty.”

In subsection (2) there may have been a concern around the fact that a regulatory body, once they’ve received the information, could only use information as limited by subsection (2). Again, if they received it for a statutory or legal duty, then they can use it for that purpose. In fact, further exceptions and additional requirements can be prescribed, although we don’t anticipate that any would be needed. But certainly there is flexibility there.

In terms of a hospital disclosing a physician’s information to the college, if there is a requirement to report under the RHPA, the hospital would report. At that point, if it’s the physician’s information, that wouldn’t even be the subject of this act because if it’s purely physician information, then the Personal Health Information Protection Act doesn’t apply. If it’s information about the physician that includes, perhaps, other patient information, section 47 would apply. If someone else provided the care to the physician and therefore there is information about his or her addiction, section 47 should also address that issue too, because you can certainly use it for the purpose of carrying out a statutory legal duty, and whatever is permitted or required under the RHPA continues to be permitted or required.

1400

**Mr Orr:** On that note, I would also point to clause 9(2)(d.1), which was in the motions that were passed this morning, which says that nothing in this act shall be construed to interfere with the regulatory activities of a college under the Regulated Health Professions Act, etc. That provides some additional clarity.

**Mrs Witmer:** So then you’re guaranteeing me that in the example I’ve used—it may or may not be extreme—if a doctor were to be terminated and there had been a problem of sexual abuse or addiction, for lack of other examples, that information would continue and must be communicated to the college?

**Ms Perun:** Must I guarantee? What I would like to say with respect to section 47 is that the whole package of RHPA fixes—this is something we would be very interested to hear feedback on from the colleges once it’s out in the public domain as to what changes were done. Then, if there is the need for further fixes, certainly we would take the advice to deal with the issues, if there are any other issues.

**Mrs Witmer:** Since you’ve given me that guarantee, that’s fine.

**The Chair:** Other comments or questions? If none, those in favour of amendment number 81, a government motion? Against, if any? I see none. It is carried.

Amendment number 82, an NDP motion.

**Ms Martel:** I think this came forward in some of the original concerns that were raised by the federation and individual colleges, as I see the word “college.” Maybe I’d better ask ministry staff if this has been dealt with. I apologize. There were a number that came forward and I know you’re trying to fix most of them. I’m just not sure that they’re all being fixed.

**Ms Perun:** This was a very long-winded explanation I gave with respect to section 47 and the amendments that were proposed under the government motion.

**Ms Martel:** So the one we just dealt with?

**Ms Perun:** The one we just did, yes.

**Ms Martel:** It looks like it has been taken care of, then, Mr Chair. I’m assured that it has been taken care of, so I will withdraw my motion.

**The Chair:** Amendment number 82 has been withdrawn. I move on to amendment number 83, a PC motion.



**Mrs Witmer:** We would withdraw that motion.

**The Chair:** So 83 is withdrawn also.

Shall section 47 of schedule A, as amended, carry? Against? I see none. It is carried.

Now we'll move on to section 48: amendment 84, a PC motion.

**Mrs Witmer:** Again, in the light of the discussion, I would withdraw that motion.

**The Chair:** So 84 has been withdrawn.

Number 85 is a government motion.

**Mr Fonseca:** I move that subsection 48(3) of the Personal Health Information Protection Act, 2003 be struck out.

**The Chair:** Questions or comments? I see none. Those in favour of the amendment? Against, if any? I see none. It is carried.

Motion 86, a PC motion.

**Mrs Witmer:** Again, in light of the discussion, we would withdraw this.

**The Chair:** So 86 has been withdrawn.

Shall section 48 of schedule A, as amended, carry? Against? I see none. It is carried.

We'll move on to section 49. I don't see any amendments. Shall section 49 of schedule A carry? It is carried.

Section 50: amendment 87, a government motion.

**Mr Fonseca:** I move that clauses 50(1)(a) and (b) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"(a) the record or the information in the record is subject to a legal privilege that restricts disclosure of the record or the information, as the case may be, to the individual;

"(b) another act, an act of Canada or a court order prohibits disclosure to the individual of the record or the information in the record in the circumstances."

**The Chair:** Any questions or comments? I see none. All those in favour of amendment number 87? Against, if any? I see none. It is carried.

Amendment number 88, an NDP motion.

**Ms Martel:** I move that subclause 59(1)(e)(i) of the Personal Health Information Protection Act, 2003 be amended by striking out "serious bodily harm" and substituting "serious bodily or psychological harm".

Mr Chair, you will recall that we heard from the psychological association on Thursday. It was his view that we add the word "psychological." The example he gave had to do with a young individual who had not yet been told that he had been adopted, and that was in his records. Disclosure of that information certainly wouldn't cause him serious bodily harm, but not knowing he was adopted and finding that out through health records at 15 might cause him psychological harm. That's why I've included it here. It didn't come forward from the government, so I'm not sure if you've dismissed it or you have some opposition to it. I guess I'm going to hear that right now.

**The Chair:** Questions or comments? Clarification from the ministry staff?

**Mr Orr:** I will clarify that. The jurisprudence interpreting the term "serious bodily harm," and it's a fairly commonly and widely used term, is such that it does include psychological harm. One does not need to add "psychological harm." Serious bodily harm, according to the established jurisprudence, includes psychological harm. So we felt that it wasn't necessary to do this.

**Ms Martel:** Let me just raise something with you. I thought that came forward from a pretty legitimate group, since it was their association, not a specific practitioner. I wouldn't pretend to know much about jurisprudence—I'm not a lawyer—but when I just see "bodily," as a layperson I read that as "physical harm" to self inflicted somewhere; I don't read it as "psychological."

If it wouldn't cause the government grief one way or the other, I guess I'd like to see it added—or take out "bodily" and just put "serious harm." Then it's wide open.

**Ms Wynne:** Could I just ask, Mr Chair, if staff could explain why it would be a problem to include "psychological"?

**Mr Orr:** First, to address Ms Martel's point about how it may be an option to take out the words "bodily harm," it certainly is something that was considered, but it was thought that would be too broad, that it might entail things like financial harm, which may give much further grounds for refusing than the term "bodily harm," so it was thought that the term "bodily harm" was the appropriate term.

To address Ms Wynne's question, it would be possible to put in a term like "psychological" despite the fact that it is not legally necessary. The problem with that is, once you start adding in terms you have to ask yourself what you are leaving out, once you start coming up with a grocery list.

When we looked at it, what we decided is that there is an established jurisprudence on this term, "serious bodily harm." It's used in other pieces of Ontario legislation, like the Patient Restraints Minimization Act. There, it doesn't talk about psychological harm. If we were to have "psychological harm" in here in addition to "serious bodily harm," it would raise a question then about the application of the Patient Restraints Minimization Act. So we came to the conclusion that we should probably just leave it with the term "serious bodily harm."

**Ms Perun:** In addition, the Mental Health Act involuntary committal criteria talk about serious bodily harm and do not speak to it as psychological or physical. So, it's a fairly broad category.

1410

**The Chair:** Other comments? Seeing none, we'll vote on amendment number 88, an NDP motion. Those in favour of the amendment? I see Ms Martel. Against the amendment? It is defeated.

Number 89, a government motion.

**Mr Fonseca:** I move that section 50 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:



"Health information custodian not relieved of responsibility

"(7) Nothing in this part relieves a health information custodian from a legal duty to provide, in a manner that is not inconsistent with this act, personal health information as expeditiously as is necessary for the provision of health care to the individual."

**The Chair:** Questions or comments?

**Ms Martel:** Can I just ask a question about this? Is this to respond to concerns by CMHA about the difference between days?

**Ms Appathurai:** Yes, in part.

**Ms Perun:** There is also another motion that addresses that issue specifically.

**Ms Appathurai:** We are responding to concerns that individuals had raised that the health information custodian has to respond within 30 days, and what do you do when an individual, a patient needs that information much more quickly? This provides the health information custodian with knowledge that he can act earlier, and provides an ability for the patient to speak to the Information and Privacy Commissioner when that's not provided.

**Ms Martel:** That 30 days is actually in the legislation somewhere else, and we'll be changing that. We haven't got to it yet?

**Ms Perun:** That is motion number 91. This motion number 89 also simply speaks to the custodian, that he or she is not relieved of their responsibility. So they cannot hide behind the 60-day period and say, "I have 60 days to deal with it." In fact, if they need the record for the care, that is outside an access request; that should just be done.

**The Chair:** Any other questions or comments? If none, those in favour of the amendment? Against, if any? I don't see any against, so it is carried.

Shall section 50 of schedule A, as amended, carry? Against? One against. Carried.

Shall section 51 of schedule A carry? Against, if any? I don't see any, so it is carried.

Section 52: amendment number 90, a government motion.

**Mr Fonseca:** I move that subsection 52(1) of the Personal Health Information Protection Act, 2003 be amended by striking out "or" at the end of clause (b) and by striking out clause (c) and substituting the following:

"(c) if the custodian is entitled to refuse the request, in whole or in part, under any provision of this part other than clauses 50(1)(c), (d) or (e), give a written notice to the individual stating that the custodian is refusing the request, in whole or in part, and stating that the individual is entitled to make a complaint about the refusal to the commissioner under part VI; or

"(d) if the custodian is entitled to refuse the request, in whole or in part, under clause 50(1)(c), (d) or (e), give a written notice to the individual stating that the custodian is refusing to confirm or deny the existence of any record subject to any of those provisions and that the individual is entitled to make a complaint about the refusal to the commissioner under part VI."

**The Chair:** Questions or comments? I see none. In favour of amendment number 90? Against, if any? I don't see any. It is carried.

Amendment number 91, a government motion.

**Mr Fonseca:** I move that section 52 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:

"Expedited access

"(4.1) If an individual requires access to his or her own record of personal health information on an urgent basis, the individual may make an application to the commissioner for a reduction in the amount of time in which a health information custodian is required to respond under subsection (2) and, despite subsections (2) and (3), the custodian shall provide access within the time specified by the commissioner."

**The Chair:** Comments or questions?

**Ms Martel:** Just a question: Does that application have to be in writing or can it be verbal? Do you need to clarify that?

**Ms Perun:** The application right now could be either, written or oral, but I imagine the commissioner, because the commissioner will set her own processes, will require a written application.

**The Chair:** Other comments or questions? Seeing none, those in favour of the amendment? Against, if any? I see none. It is carried.

Government motion 92.

**Mr Fonseca:** I move that subsection 52(7) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"Right to complain and burden of proof

"(7) If the health information custodian refuses or is deemed to have refused the request, in whole or in part,

"(a) the individual is entitled to make a complaint about the refusal to the commissioner under part VI; and

"(b) in the complaint, the burden of proof in respect of the refusal lies on the health information custodian."

**The Chair:** Questions or comments? I see none. Those in favour of the amendment? Against, if any? It is carried.

Shall section 52 of schedule A, as amended, carry? Against? I see none. It is carried.

Section 53: amendment 93, a government motion.

**Mr Fonseca:** I move that clauses 53(10)(a) and (b) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

"(a) make the requested correction in the record by recording the correct information and,

"(i) by striking out the incorrect information in a manner that does not obliterate it, or

"(ii) if that is not possible, by labelling the information as incorrect and severing it from the record and storing it separately from the record, while maintaining a link in the record that enables the incorrect information to be traced;

"(a.1) if it is not possible to take the steps set out in subclause (a)(i) or (ii), ensure that there is a practical system in place so that a person accessing the incorrect

information is informed that the information is incorrect and is directed to the correct information;

“(b) give notice to the individual of what it has done under clause (a) or (a.1); and”.

**The Chair:** Questions or comments? I see none. Those in favour of amendment number 93? Against? I don't see any. It is carried.

Shall section 53, as amended, carry? For? Against? I don't see any. It is carried.

Shall section 54, of schedule A carry? In favour? Against? It is carried.

Shall section 55 of schedule A carry? In favour? Against? It is carried.

Shall section 56 of schedule A carry? In favour? Against? It is carried.

Section 57: amendment 94, an NDP motion.

**Ms Martel:** As I look at my motion and at the government's which is following next, there are very few changes, I think, between mine and the government's. That responds to the concerns from the presentation by the commissioner. Since I see there are some changes, I will withdraw mine.

**The Chair:** Amendment number 94 has been withdrawn by Ms Martel.

We move on to amendment 95. It is a government motion. Mr Fonseca? Oh, he's not there. Ms Wynne. Sorry. I wasn't looking.

1420

**Ms Wynne:** I didn't look when I said I would do it. I didn't look to see what motion was coming.

I move that sections 57, 58 and 59 of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

“Power to enter

“57 (1) In conducting a review under section 55 or 56, the commissioner may, without a warrant or court order, enter and inspect any premises in accordance with this section if,

“(a) the commissioner has reasonable grounds to believe that,

“(i) the person about whom the complaint was made or the person whose activities are being reviewed is using the premises for a purpose related to the subject matter of the complaint or the review, as the case may be, and

“(ii) the premises contain books, records or other documents relevant to the subject matter of the complaint or the review, as the case may be;

“(b) the commissioner is conducting the inspection for the purpose of determining whether the person has contravened or is about to contravene a provision of this act or its regulations; and

“(c) the commissioner does not have reasonable grounds to believe that a person has committed an offence.

“Review powers

“(2) In conducting a review under section 55 or 56, the commissioner may,

“(a) demand the production of any books, records or other documents relevant to the subject matter of the

review or copies of extracts from the books, records or other documents;

“(b) inquire into all information, records, information practices of a health information custodian and other matters that are relevant to the subject matter of the review;

“(c) demand the production for inspection of anything described in clause (b); or

“(d) use any data storage, processing or retrieval device or system belonging to the person being investigated in order to produce a record in readable form of any books, records or other documents relevant to the subject matter of the review; or

“(e) on the premises that the commissioner has entered, review or copy any books, records or documents that a person produces to the commissioner, if the commissioner pays the reasonable cost recovery fee that the health information custodian or person being reviewed may charge.

“Entry to dwellings

“(3) The commissioner shall not, without the consent of the occupier, exercise a power to enter a place that is being used as a dwelling, except under the authority of a search warrant issued under subsection (4).

“Search warrants

“(4) Where a justice of the peace is satisfied by evidence upon oath or affirmation that there is reasonable ground to believe it is necessary to enter a place that is being used as a dwelling to investigate a complaint that is the subject of a review under section 55, he or she may issue a warrant authorizing the entry by a person named in the warrant.

“Time and manner for entry

“(5) The commissioner shall exercise the power to enter premises under this section only during reasonable hours for the premises and only in such a manner so as not to interfere with health care that is being provided to any person on the premises at the time of entry.

“No obstruction

“(6) No person shall obstruct the commissioner who is exercising powers under this section or provide the commissioner with false or misleading information.

“Written demand

“(7) A demand for books, records or documents or copies of extracts from them under subsection (2) must be in writing and must include a statement of the nature of the things that are required to be produced.

“Obligation to assist

“(8) If the commissioner makes a demand for any thing under subsection (2), the person having custody of the thing shall produce it to the commissioner and, at the request of the commissioner, shall provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce a record in readable form, if the demand is for a document.

“Removal of documents

“(9) If a person produces books, records and other documents to the commissioner, other than those needed



for the current health care of any person, the commissioner may, on issuing a written receipt, remove them and may review or copy any of them if the commissioner is not able to review and copy them on the premises that the commissioner has entered.

**“Return of documents**

“(10) The commissioner shall carry out any reviewing or copying of documents with reasonable dispatch, and shall forthwith after the reviewing or copying return the documents to the person who produced them.

**“Admissibility of copies**

“(11) A copy certified by the commissioner as a copy is admissible in evidence to the same extent, and has the same evidentiary value, as the thing copied.

**“Answers under oath**

“(12) In conducting a review under section 55 or 56, the commissioner may, by summons, in the same manner and to the same extent as a superior court of record, require the appearance of any person before the commissioner and compel them to give oral or written evidence on oath or affirmation.

**“Inspection of record without consent**

“(13) Despite subsections (2) and (12), the commissioner shall not inspect a record of, require evidence of, or inquire into, personal health information without the consent of the individual to whom it relates, unless,

“(a) the commissioner first determines that it is reasonably necessary to do so, subject to any conditions or restrictions that the commissioner specifies, which shall include a time limitation, in order to carry out the review and that the public interest in carrying out the review justifies dispensing with obtaining the individual’s consent in the circumstances; and

“(b) the commissioner provides a statement to the person who has custody or control of the record to be inspected, or the evidence or information to be inquired into, setting out the commissioner’s determination under clause (a) together with brief written reasons any restrictions and conditions that the commissioner has specified.

**“Limitation on delegation**

“(14) Despite section 65(1), the power to make a determination under clause (13)(a) and to approve the brief written reasons under clause (13)(b) may not be delegated except to the assistant commissioner.

**“Document privileged**

“(15) A document or thing produced by a person in the course of an inquiry is privileged in the same manner as if the inquiry were a proceeding in a court.

**“Protection**

“(16) Except on the trial of a person for perjury in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of a review by the commissioner is admissible in evidence in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the commissioner shall be given against any person.

**“Protection under federal act**

“(17) A person giving a statement or answer in the course of a review by the commissioner shall be informed by the commissioner of his or her right to object to answer any question under section 5 of the Canada Evidence Act.

**“Representations**

“(18) The person who made the complaint, the person about whom the complaint is made and any other affected person shall be given an opportunity to make representations to the commissioner.

**“Access to representations**

“(19) The commissioner may permit a person to be present during, to have access to or to comment on representations made to the commissioner by another person, unless that other person expressly requests otherwise.

**“Counsel or agent**

“(20) A person who is given an opportunity to make representations to the commissioner may be represented by counsel or an agent.

**“Proof of appointment**

“(21) If the commissioner or assistant commissioner has delegated his or her powers under this section to an officer or employee of the commissioner, the officer or employee who exercises the powers shall, upon request, produce the certificate of delegation signed by the commissioner or assistant commissioner, as the case may be.”

**The Chair:** That could have been a good contest with Bert, a former Deputy Speaker. Questions or comments?

**Ms Wynne:** I think there’s a comment that staff would like to make on this.

**The Chair:** Yes, please.

**Ms Perun:** This is with respect to the difference between the NDP motion and the government motion, and also the difference between the government motion and the amendments that were proposed by the privacy commissioner in her submission. It’s subsection 57(13) at 95.2. Here, basically the way the amendment works is that without consent, the commissioner will in fact have access to health records and be able to speak to custodians; however, the commissioner first has to determine that this is reasonably necessary and that it’s in the public interest to dispense with obtaining consent. Secondly, the commissioner, then, in exercising this decision, must provide a statement to the person who has custody or control of the record and also set out a brief written reason as to the reasons for requesting this information. So that is the primary difference between the approaches.

Secondly—and it’s more of a technical matter—subsections 57(15) through (20) are procedural matters, and they are consistent with the provisions in the Freedom of Information and Protection of Privacy Act. Also to note in subsection 57(14), the limitation on delegation, this exercise of decision-making is not to be delegated to anyone but the assistant commissioner, and so no one else in the office will be able to exercise this discretion. It would rest with the commissioner or the assistant commissioner.

**Ms Wynne:** In clause 57(13)(b) on page 4, which is 95.3, there is a word that has been omitted in (b) in the second-last line: “together with brief written reasons” and

“any restrictions.” So I need to move an amendment to insert “and.”

**The Chair:** So it would read, “and any restrictions”?

**Ms Wynne:** Yes, “with brief written reasons and any restrictions and conditions that the commissioner has specified.” I think Halyna was just talking about that. We need the “and” there.

**The Chair:** It’s got to be an amendment. So it is an amendment to the amendment.

Other comments or questions? If none, we will vote on the amendment to the amendment first. Those in favour of the amendment to the amendment with the addition of the word “and” in clause 57(13)(b), the second-last line. In favour? Sorry, I didn’t see that. In favour of the amendment? Against? I see none against. It is carried.

1430

Now we’ll vote on the motion as amended. In favour of the motion as amended? Agreed? Against? I don’t see any. It is carried.

Shall section 57 of schedule A, as amended, carry? In favour? Against? I see none. It is carried.

Section 58: We have some amendments. It’s just that the amendment number was repeated three times.

**Ms Perun:** The motion that was just read deals with sections 57, 58 and 59.

**Ms Wynne:** Mr Chair, do we not need to move 58 and 59, now?

**The Chair:** Yes, we have to move that one. Thank you.

Shall section 58 of schedule A carry as amended? Just a second.

**Mr Orr:** The motion which was just passed, part of that motion was that sections 57, 58 and 59 be struck out and the text that was read be substituted. That means that there is no longer any section 58 or 59.

**The Chair:** So we’re not doing anything on that then?

**Mr Orr:** I would just look to legislative counsel to confirm that we don’t need a confirmation.

**Clerk of the Committee:** The motion on page 95 says right at the beginning “sections 57, 58 and 59 of the Personal Health Information Protection Act, 2003 be struck out.” So, to me, they are gone and then we replace them with this amendment. Now we’re going to go to the amendment to section 60, which is page 96.

**The Chair:** So we don’t do anything for 58 or 59?

**Clerk of the Committee:** No, because they were struck out.

**The Chair:** Thank you. Section 60: amendment 96, a government motion.

**Ms Wynne:** I move that subsection 60(3) of the Personal Health Information Act, 2003 be amended by striking out “a copy of them to” in the portion before clause (a) and substituting “a copy of them, including reasons for any order made, to”.

**The Chair:** Comments or questions? I see none. Those in favour? Carried.

Number 97 is a government motion.

**Ms Wynne:** I move that subsection 60(4) of the Personal Health Information Protection Act, 2003 be struck out.

**The Chair:** Any questions or comments?

If none; those in favour? Against, if any? I don’t see any. It is carried.

Shall section 60 of schedule A, as amended, carry? In favour? Against? I don’t see any.

It is carried.

Now, section 60.1, a government motion.

**Ms Wynne:** I move that the Personal Health Information Protection Act, 2003 be amended by adding the following section:

“Appeal of order

“60.1(1) A person affected by an order of the commissioner made under clauses 60(1)(c) to (h) may appeal the order to the Divisional Court on a question of law in accordance with the rules of court by filing a notice of appeal within 30 days after receiving the copy of the order.

“Certificate of commissioner

“(2) In an appeal under this section, the commissioner shall certify to the Divisional Court,

“(a) the order and a statement of the commissioner’s reasons for making the order;

“(b) the record of all hearings that the commissioner has held in conducting the review on which the order is based;

“(c) all written representations that the commissioner received before making the order; and

“(d) all other material that the commissioner considers is relevant to the appeal.

“Confidentiality of information

“(3) In an appeal under this section, the court may take precautions to avoid the disclosure by the court or any person of any personal health information about an individual, including, where appropriate, receiving representations without notice, conducting hearings in private or sealing the court files.

“Court order

“(4) On hearing an appeal under this section, the court may, by order,

“(a) direct the commissioner to make the decisions and to do the acts that the commissioner is authorized to do under this act and that the court considers proper; and

“(b) if necessary, vary or set aside the commissioner’s order.

“Compliance by commissioner

“(5) The commissioner shall comply with the court’s order.”

**The Chair:** Thank you. Any questions or comments? I see none. Those in favour of the amendment? Against, if any? It is carried.

Section 61: government motion 99.

**Ms Wynne:** I move that section 61 of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

“Enforcement of order

“61. An order made by the commissioner under this act that has become final as a result of there being no further right of appeal may be filed with the Superior Court of Justice and on filing becomes and is enforceable



as a judgment or order of the Superior Court of Justice to the same effect.”

**The Chair:** Any questions or comments? I see none. Those in favour of the amendment? It is carried.

Shall section 61, as amended, be carried? Against, if any? It is carried.

Section 62: government motion number 100.

**Ms Wynne:** I move that subsection 62(3) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

“Copy of order, etc.

“(3) Upon making a further order under subsection (1), the commissioner shall provide a copy of it to the persons described in clauses 60(3)(a) to (e) and shall include with the copy a notice setting out,

“(a) the commissioner’s reasons for making the order; and

“(b) if the order was made under clauses 60(1)(c) to (h), a statement that the persons affected by the order to have the right to appeal described in subsection (4).

“Appeal

“(4) A person to whom an order that the commissioner rescinds, varies or makes under subsection (1) is directed may appeal the order to the Divisional Court on a question of law in accordance with the rules of court by filing a notice of appeal within 30 days after receiving the copy of the order and subsections 60.1(2) to (5) apply to the appeal.”

**The Chair:** Any questions or comments? I see none. In favour of the amendment? Against, if any? I don’t see any against, so it is carried.

Shall section 62 of schedule A, as amended, carry? In favour? Against, if any? None against, so it is carried.

Section 63: government motion number 101.

**Mr Fonseca:** I’d like to withdraw the first amendment and replace it with this one that I’ll read out now.

I move that subsection 63(1) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

“Damages for breach of privacy

“63(1) If the commissioner has made an order under this act that has become final as the result of there being no further right of appeal, a person affected by the order may commence a proceeding in the Superior Court of Justice for damages for actual harm that the person has suffered as a result of a contravention of this act or its regulations.”

1440

**The Chair:** Questions or comments on amendment number 101.1? There aren’t any. Those in favour of the amendment? Against, if any? I don’t see any against, so it is carried.

Shall section 63 of schedule A, as amended, carry? It is carried.

Section 64: amendment 102, a government motion.

**Mr Fonseca:** I move that clause 64(e) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

“(e) assist in investigations and similar procedures conducted by a person who performs similar functions to the commissioner under the laws of Canada, except that in providing assistance, the commissioner shall not use or disclose information collected by or for the commissioner under this act.”

**The Chair:** Any questions or comments? I see none. All those in favour of the amendment? Against? It is carried.

Shall section 64, schedule A, as amended, carry? It is carried.

Section 65: amendment 103, a government motion.

**Mr Fonseca:** I move that subsection 65(1) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

“Delegation

“65(1) The commissioner may in writing delegate any of the commissioner’s powers, duties or functions under this act, including the power to make orders, to the assistant commissioner or to an officer or employee of the commissioner.”

**The Chair:** Any questions or comments? I see none. Those in favour of the motion? Against? None. It is carried.

Shall section 65 of schedule A carry, as amended? Against? I see none. It is carried.

Section 66: amendment 104, a government motion.

**Mr Fonseca:** I move that section 66 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsections:

“Limitation on collection, use or retention of personal health information

“66(0.1) The commissioner and any person acting under his or her authority may collect, use or retain personal health information in the course of carrying out any functions under this part solely if no other information will serve the purpose of the collection, use or retention of the personal health information and in no other circumstances.

“Same

“(0.2) The commissioner and any person acting under his or her authority shall not in the course of carrying out any functions under this part collect, use or retain more personal health information than is reasonably necessary to enable the commissioner to perform his or her functions relating to the administration of this act or for a proceeding under it.”

**The Chair:** Any questions or comments? None. Those in favour of the amendment? Against, if any? It is carried.

Now amendment number 105, a government motion.

**Mr Fonseca:** I move that clause 66(1)(c) of the Personal Health Information Protection Act 2003 be amended by striking out “or” at the end of clause (b), by striking out clause (c) and by substituting the following:

“(c) the commissioner obtained the information under subsection 57(12) and the disclosure is required in a prosecution for an offence under section 131 of the Criminal Code (Canada) in respect of sworn testimony; or

“(d) the disclosure is made to the Attorney General, the information relates to the commission of an offence against an act or an act of Canada and the commissioner is of the view that there is evidence of such an offence.”

**The Chair:** Questions or comments? I see none. Those in favour of amendment 105? Against, if any? It is carried.

Shall section 66 of schedule A, as amended, carry? All in favour? Against? None. It is carried.

Section 67: Shall section 67 of schedule A carry? Against? I see none. It is carried.

Section 68: Shall section 68 of schedule A carry? Against? It is carried.

Section 69: amendment 106, a government motion.

**Mr Fonseca:** I move that clause 69(4)(b) of the Personal Health Information Protection Act, 2003 be amended by striking out “section 23” and substituting “section 5 or 23”.

**The Chair:** Questions or comments? Seeing none, all in favour of amendment 106? Against? Seeing none, carried.

Shall section 69 of schedule A carry, as amended? Against? It is carried.

Section 70: government motion number 107.

**Mr Fonseca:** I move that clause 70(1)(b) of the Personal Health Information Protection Act, 2003 be struck out.

**The Chair:** Questions and comments?

**Mrs Witmer:** I’m just wondering why that is being omitted. I don’t remember.

**The Chair:** Clarification?

**Mr Orr:** I can answer the question. Clause (b) is being taken out because it’s covered by (c). When you look at all the items in (c), anything that would be covered by (b) is now covered by (c).

**The Chair:** Any other questions or comments? Seeing none, those in favour of amendment 107? Against? None. Carried.

Amendment 108, a government motion.

**Mr Fonseca:** I move that clauses 70(1)(d) and (e) of the Personal Health Information Protection Act, 2003 be struck out and the following substituted:

“(d) disposes of a record of personal health information after a request for access to the record is received under subsection 51(1) with an intent to evade the request for access to the record;

“(e) wilfully disposes of a record of personal health information in contravention of section 13;”

**The Chair:** Questions or comments? I see none. All in favour of amendment 108? Against? I see none. It is carried.

Amendment 109, a government motion.

**Mr Fonseca:** I move that section 70 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:

“Attorney General may commence a prosecution

“(5) No person other than the Attorney General or a counsel or agent acting on behalf of the Attorney General

may commence a prosecution for an offence under subsection (1).”

**The Chair:** Questions or comments? I see none. Those in favour of amendment 109? Against? I see none. It is carried.

Shall section 70 of schedule A, as amended, carry?

**Ms Martel:** I have a question on subsection 70(3). I forget which presentation it was, but I’m wondering why the wording hasn’t been changed in the penalty section. We have a person who is guilty of an offence, and there’s a listing of financial penalties. Then we have, “If a corporation commits an offence,” instead of “is guilty of an offence,” then a number of things happen. I believe we had a presentation that said the wording should be the same to make it clear that people are guilty rather than have committed an offence, if the penalties are to apply under subsection (3) with respect to the officers. Is that covered somewhere else?

**The Chair:** Is the ministry staff ready to respond?

**Ms Perun:** The question that we had was with respect to subsection (3), that it should be deleted?

**Ms Martel:** No, the suggestion is that it should say if a corporation is guilty, so it matches—

**Ms Perun:** The issue was whether or not the corporation has been prosecuted or convicted, so it’s a strict liability provision. We actually just went back and reviewed other offence provisions that pertain to corporations, and they’re very consistent. So we’re basically consistent in our approach with other Ontario legislation.

**Ms Martel:** So the language with respect to officers is consistent with other statutes?

**Ms Perun:** That’s right.

**The Chair:** Now we’ll take the vote. Shall section 70 of schedule A, as amended, carry? In favour? Against? I don’t see any. It is carried.

Section 71: NDP motion 110.

1450

**Ms Martel:** I had put that forward as a result of the presentation that came forward by NAID with respect to having criteria around destruction and disposal etc of documents. In conversation with ministry staff earlier this morning, I gather there is going to be more discussion with other stakeholders as well about the best way to do that, so I will withdraw that for now, although it would have to be done by regulation at some point, right? So I withdraw that.

**The Chair:** So you’ll withdraw 110.

Amendment 111, an NDP motion.

**Ms Martel:** This goes back to our trying to accommodate the request that had come forward by Smart Systems. I gather that more work is going to have to go on so I will withdraw the amendment at this time.

**The Chair:** You will withdraw 111.

Amendment 112, an NDP motion.

**Ms Martel:** I don’t know if I’m going to withdraw this one because I don’t think we’ve had a discussion about research ethics boards. I must admit that I do have some concerns about how these get composed, how they become legitimate. If the ministry staff can tell me how



you are going to do that, then it may mean that I will withdraw it.

**Ms Perun:** From a purely technical point of view, the research ethics board is defined on page 8 of the bill; it “means a board of persons that is established for the purpose of approving research plans under section 43 and that meets the prescribed requirements.” So already there is a regulation-making power that addresses the issue that there should be regulations pertaining to REBs, and the NDP motion pertaining to (k.1) is not needed. It’s redundant because there is already a regulation-making power to deal with research ethics boards. That’s from a legal point of view.

**Ms Martel:** So where it says in the definition “that meets the prescribed requirements,” under that section the ministry will set up all the criteria to establish a recognized REB?

**Ms Perun:** That’s right.

**Ms Martel:** Mr Chair, I would withdraw it.

**The Chair:** You’ll withdraw 112.

Number 113 is a government motion.

**Mr Fonseca:** I move that subsection 71(1) of the Personal Health Information Protection Act, 2003 be amended by adding the following clause:

“(m.1) prescribing under what circumstances the Canadian Blood Services may collect, use and disclose personal health information, the conditions that apply to the collection, use and disclosure of personal health information by the Canadian Blood Services and disclosures that may be made by a health information custodian to the Canadian Blood Services;”

**The Chair:** Questions or comments? Seeing none, those in favour of amendment 113? Against, if any? It is carried.

Government motion 114.

**Mr Fonseca:** I move that section 71 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsection:

“Same

“(4) Where this act specifies a power to prescribe a person, the power may be used to prescribe a class of persons.”

**The Chair:** Questions or comments? Seeing none, those in favour of amendment 114? Against, if any? I don’t see any. It is carried.

Shall section 71 of schedule A, as amended, carry? It is carried.

**Ms Perun:** May I just say something with respect to the last motion and the Canadian Blood Services? Because I did say that I was going to say where we had consulted. With respect to the Canadian Blood Services’ regulation-making power, this language has been reviewed by the Canadian Blood Services and we will continue working with them.

**The Chair:** Thank you.

Section 72: amendment 115, an NDP motion.

**Ms Martel:** I move that subsection 72(11) of the Personal Health Information Protection Act, 2003 be struck out.

This is the section that says “no review,” that is, no review of a decision made by the minister to not have a public consultation around a specific regulation or set of regulations. I raised this with the minister when we first met. I’ve raised it again with ministry staff and understand that their reasoning is that there is a two-year time provision where that would expire anyway. In most cases it might be an emergency etc. However, I just don’t know why you would want to have any kind of section where there wouldn’t be a review of this decision. It just makes it look like there might be something to hide. I don’t think you want to be there and have that as a perception. I do think as well, and I stand to be corrected, in the commissioner’s presentation to us, while it was not highlighted in her oral submission, in her written submission she made reference to this as well.

I just think that we shouldn’t have a provision that would not allow for some kind of a review, even if it’s by the commissioner—probably specifically by the commissioner, since it’s that office that will have overarching responsibility to deal with this legislation.

**The Chair:** Questions or comments? Ministry staff.

**Mr Orr:** I think that it’s largely a policy decision, so I’m not going to say a lot on it. I would point out that the kind of provision for requiring consultation on regulations in Ontario legislation is fairly rare. This is based on the provision from the Environmental Bill of Rights. Normally there is no requirement on this kind of function. I think one of the reasons is because it’s really a legislative function. The kind of function that’s being carried on here today is a legislative function, and one wouldn’t expect to have an appointed person overseeing that process to make sure that it’s done properly. It’s done by elected people.

The regulations—it’s a delegated power. It’s a power that the Legislature delegates to the cabinet to make regulations. In the same way, I think that the argument can be made that, since it’s a legislative function, it is not appropriate that an appointed official be given oversight.

**Ms Martel:** If I might, Mr Chair, I appreciate that explanation. I think the government was going in the right direction in this section to say that there would be a very public process around making regulations, and it contradicts what I think is an important and good step—to have a public process around regulations—because we haven’t had much of that in a long time. I just think it flies in the face of what is a good requirement to then turn around and say, “Well, in some cases there may not be a public process, and there’s no appeal mechanism.” I understand it’s a policy matter. I know what that means. I can appreciate that’s not going to be changed, but I just think it flies in the face of what is otherwise a very positive action.

**The Chair:** We’ll vote on this one. Any other comments or questions? If none, those in favour of amendment 115? Ms Martel. Against? It is defeated.

Amendment 116, a PC motion.

**Mrs Witmer:** I move that section 72 of the Personal Health Information Protection Act, 2003 be amended by adding the following subsections:

“Regulations laid before assembly before making

“(12) In addition to any other requirement in this section, the Lieutenant Governor in Council shall not make any regulation under section 71 unless,

“(a) the minister lays the text of the proposed regulation before the assembly if it is in session or, if not, at the next session; and

“(b) the proposed regulation is referred to a standing committee of the assembly for review.

“Review by committee

“(13) A regulation under section 71 shall not be made until after the standing committee to which it has been referred under subsection (12) has reviewed the proposed regulation and reported back to the assembly.”

If we take a look at this legislation, which is now in its third or fourth iteration, there still remains a lot of information that is going to determine how this bill is going to be implemented and the impact it might have that's going to be done through means of regulation-making. A lot of the stakeholders have expressed some concerns about what may or may not be in the regulations, and whether it will indeed provide the protection and the authority to move forward. We've heard today, as we've gone through this, that there's a lot here that remains to be done in regulations.

So this would require the minister to table the regulations, refer them to committee and, in some respects, it would provide some accountability and transparency to Bill 31. There was certainly concern expressed about the minister's broad regulation-making authority, so that will counterbalance the scope of this broadness and help provide some legitimacy to the regulations that the government will introduce.

1500

**The Chair:** Any other comments or questions? If none, we will proceed with the voting.

All those in favour of amendment 116? Three. Against? Five. The amendment is defeated.

Shall section 72 of schedule A carry? All those in favour? All those against? None. It is carried.

Shall section 73 of schedule A carry? It is carried.

Shall section 74 of schedule A carry? It is carried.

Section 75: amendment 117, a government motion.

**Mr Fonseca:** I move that subsection 75(2) of schedule A to the bill, amending subsection 9.7(1) of the Charitable Institutions Act, be struck out.

**The Chair:** Questions or comments? Seeing none, all those in favour of the amendment? All those against? I don't see any against, so it is carried.

Amendment 118, a government motion.

**Mr Fonseca:** I move that subsection 75(4) of schedule A to the bill, amending section 12 of the Charitable Institutions Act, be struck out and the following substituted:

“(4) Section 12 of the act, as amended by the Statutes of Ontario, 1993, chapter 2, section 10, 1994, chapter 26, section 70, 1996, chapter 2, section 61 and 1997, chapter

15, section 3, is amended by adding the following subsections:

“Exception

“(4) A regulation made under clause (1)(z.6) shall not apply to a record of personal health information within the meaning of the Personal Health Information Protection Act, 2003.

“Same

“(5) Despite subsection (4), a regulation made under clause (1)(z.6) that relates to the security, retention or disposal of a record of personal health information within the meaning of the Personal Health Information Protection Act, 2003 applies to the extent that the regulation is consistent with that act and the regulations made under it.”

**The Chair:** Questions or comments? Seeing none, all those in favour of amendment 118? Against, if any? None. It is carried.

Shall section 75 of schedule A, as amended, carry? It is carried.

Shall section 76 of schedule A carry? Against, if any? Seeing none, it is carried.

Shall section 77 of schedule A carry? It is carried.

Shall section 78 of schedule A carry? It is carried.

Section 79: government motion 119.

**Mr Fonseca:** I move that section 79 of schedule A to the bill, amending the Freedom of Information and Protection of Privacy Act, be amended by adding the following subsections:

“(1.1) Clause 33(2)(c) of the act is repealed and the following substituted:

“(c) a reference to the provision of this act or the Personal Health Information Protection Act, 2003 on which the head relies.”

“(1.2) Subsection 34(2) of the act is repealed and the following substituted:

“Contents of report

“(2) A report made under subsection (1) shall specify,

“(a) the number of requests under this act or the Personal Health Information Protection Act, 2003 for access to records made to the institution;

“(b) the number of refusals by the head to disclose a record, the provisions of this act or the Personal Health Information Protection Act, 2003 under which disclosure was refused and the number of occasions on which each provision was invoked;

“(c) the number of uses or purposes for which personal information is disclosed where the use or purpose is not included in the statements of uses and purposes set forth under clauses 45(d) and (e) or the written public statement provided under subsection 16(1) of the Personal Health Information Protection Act, 2003;

“(d) the amount of fees collected by the institution under section 57 or under subsection 52(9) of the Personal Health Information Protection Act, 2003; and

“(e) any other information indicating an effort by the institution to put into practice the purposes of this act or the Personal Health Information Protection Act, 2003.”

**The Chair:** Questions or comments?



**Ms Martel:** Has the commissioner reviewed this whole section?

**Ms Perun:** These were reviewed by the Management Board of Cabinet, which has jurisdiction over the freedom-of-information legislation particularly. This is that technical fix that resided earlier in section 8. Section 8 referenced section 34, and now it has been split to actually be reflected in FIPPA. Michael would be able to answer anything else. It was in section 34 earlier, and now it resides in its entirety in FIPPA.

**Mr Orr:** The short answer to the question, though, I think is that the Information and Privacy Commissioner has not seen these particular provisions—not seen the amendments. She has not seen the motions. She has seen the amendments being made in the bill, and we considered her comments. As I understand it, at second reading we will have an opportunity to make further changes if it is necessary.

**Ms Martel:** Because some of the requirement is now on her office to do a number of these things versus government per se, in terms of the reporting?

**Mr Orr:** No, these reporting requirements were previously on government and continue to be on government. All that's happening here is that there is an expansion of the provision so that it deals not just with the government institutions' obligations to report matters under the Freedom of Information and Protection of Privacy Act but also the obligations to report matters relating to their administration of this bill, the number of access requests, how they've been disposed of and that kind of thing. These particular provisions are in relation to the obligations of government offices, so this will relate to the Ministry of Health.

**The Chair:** Ms Wynne, you had a question?

**Ms Wynne:** No, sorry.

**The Chair:** Any other questions or comments? If none, those in favour of government amendment 119? Against? I don't see any. So it is carried.

Amendment 120, a government motion.

**Ms Wynne:** I move that subsection 58(3) of the Freedom of Information and Protection of Privacy Act, as set out in subsection 79(3) of schedule A to the bill, be amended by adding the following clause:

“(b.1) information related to the number of times the commissioner has made a determination under subsection 57(13) of that act and general information about the commissioner's grounds for the determination.”

**The Chair:** Any questions or comments? Seeing none, those in favour of amendment 120? Against? It is carried.

Shall section 79 of schedule A, as amended, carry? Against? It is carried.

There are no amendments to sections 80 to 81 of schedule A. Shall sections 80 and 81 carry? Against? Seeing none, carried.

Section 82:

**Ms Wynne:** It's an amendment to subsection 82(3.1).

I move that section 82 of schedule A to the bill, amending the Health Care Consent Act, 1996 be amended by adding the following subsection:

“(3.1) Subsection 20(8) of the act is amended by striking out ‘within the meaning of the Divorce Act, (Canada)’ at the end.”

This speaks to Ms Martel's earlier proposed amendment regarding the definitions of “relative” and “spouse.”

1510

**The Chair:** Any comments or questions? Seeing none, all in favour of the amendment to subsection 82(3.1)? Against? None. It is carried.

Shall section 82 of schedule A, as amended, carry? That is carried.

Shall sections 83 and 84 of schedule A carry? Carried.

Section 85: government motion 121.

**Ms Wynne:** I move that subsection 85(2) of schedule A to the bill, amending subsection 18.1(1) of the Homes for the Aged and Rest Homes Act, be struck out.

**The Chair:** Any questions or comments? None. Those in favour of amendment 121? Against? Seeing none, it is carried.

Shall section 85 of schedule A, as amended, carry? It is carried.

Shall section 86 of schedule A carry? Carried.

Section 87: amendment 122, a government motion.

**Ms Wynne:** I move that subsection 87(3) of schedule A to the bill, amending the definition of “substitute decision-maker” in subsection 2(1) of the Long-Term Care Act, 1994 be struck out and the following substituted:

“(3) The definition of ‘substitute decision-maker’ in subsection 2(1) of the act, as enacted by the Statutes of Ontario, 1996, chapter 2, section 71, is amended by repealing clause (a) and substituting the following:

“(a) any person who is a substitute decision-maker within the meaning of the Personal Health Information Protection Act, 2003, or”.

**The Chair:** Questions or comments? Seeing none, in favour of amendment 122? Against, if any? It is carried.

Amendment 123, a government motion.

**Ms Wynne:** I move that section 32 of the Long-Term Care Act, 1994, as set out in subsection 87(6) of schedule A to the bill, be struck out and the following substituted:

“Permitted disclosure of personal health information

“32. A service provider may disclose a record of personal health information to the minister if the disclosure is for the purpose of enabling the minister to exercise a power under section 64.”

**The Chair:** Comments or questions? Seeing none, those in favour of amendment 123? Against? Seeing none, it is carried.

Amendment 124, a government motion.

**Ms Wynne:** I move that subsection 36(1) of the Long-Term Care Act, 1994, as set out in subsection 87(14) of schedule A to the bill, be amended by striking out “subsection 86(14)” and substituting “subsection 87(14)”.

**The Chair:** Questions or comments? Seeing none, all in favour of amendment 124? Against, if any? Seeing none, it is carried.

Shall section 87 of schedule A, as amended, carry? Against? Seeing none, it is carried.

Section 88: amendment 125, a government motion.

**Ms Wynne:** I move that subsection 88(1) of schedule A to the bill, amending subsection 1(1) of the Mental Health Act, be struck out and the following substituted:

“Mental Health Act

“88. (1) The definition of “mentally competent” in subsection 1(1) of the Mental Health Act is repealed.

“(1.1) Subsection 1(1) of the act, as amended by the Statutes of Ontario, 1992, chapter 32, section 20, 1996, chapter 2, section 72 and 2000, chapter 9, section 1, is amended by adding the following definitions:

“‘personal health information’ has the same meaning as in the Personal Health Information Protection Act, 2003; (‘renseignements personnels sur la santé’)

“‘record of personal health information’, in relation to a person, means a record of personal health information that is compiled in a psychiatric facility in respect of the person; (‘dossier de renseignements personnels sur la santé’)

“(1.2) The definition of ‘substitute decision-maker’ in subsection 1(1) of the act, as enacted by the Statutes of Ontario, 1996, chapter 2, section 72, is repealed and the following substituted:

“‘substitute decision-maker’, in relation to a patient, means the person who would be authorized under the Health Care Consent Act, 1996 to give or refuse consent to a treatment on behalf of the patient, if the patient were incapable with respect to the treatment under that act, unless the context requires otherwise; (‘mandataire spécial’)

**The Chair:** Questions or comments?

**Ms Martel:** There are a number of changes in this section, and I don’t pretend to know what’s happening. I would just appreciate a really quick clarification of what you’re doing and either who has asked for this or who it’s been cleared by.

**Ms Perun:** Basically these amendments—there are about 10. One of them is actually to deal with a PPAO issue that came up at the standing committee; otherwise, it’s all very technical fixes that were basically errors we didn’t pick up when we were drafting this legislation.

For example, there is a definition of “mentally competent,” but it needed to be repealed because there’s a definition of mental capacity in the Personal Health Information Protection Act, and that definition would be used in terms of information flow. The only time it’s actually used in the Mental Health Act now, with all these amendments, would be in a very discrete information context. So there was no need to have two definitions of mental capacity.

The substitute decision-maker—the only time the context requires otherwise is set out in a particular section of the Mental Health Act, and that is where there is reference in another amendment to PHIPA, the Personal Health Information Protection Act. Otherwise, a substitute decider under the Health Care Consent Act is the substitute decision-maker, because it’s more to do with treatment and care and not information flow.

Basically, we just didn’t pick up some of these fixes that needed to be picked up.

**Ms Martel:** Can I save some time, then, and when we get to the particular change by PPAO—they made a number of suggestions, and I gather we’re going for a lot of them—I would just appreciate knowing which one it is.

**Ms Perun:** OK.

**The Chair:** No other questions?

Those in favour of amendment 125? Against, if any? I see none. It is carried.

Amendment number 126, a government motion.

**Ms Wynne:** I move that subsection 35(4.1) of the Mental Health Act, as set out in subsection 88(5) of schedule A to the bill be, struck out.

**The Chair:** Questions or comments?

**Ms Wynne:** Could we have a comment on—

**Ms Perun:** There were two clauses here before. One of them was deleted to be consistent with the policy direction in Bill 31, where the flow of information between facilities is on implied consent. This preservation from the Mental Health Act allowed the CEO to disclose records to the next CEO without consent. That was proposed to be deleted for that purpose.

With respect to the disclosure to a lawyer, there was a general amendment made in the main act to allow disclosures to lawyers and lawyers who are retained by employees. Therefore, that particular section was redundant.

**The Chair:** Other comments or questions?

Seeing none, Those in favour of amendment 126; against, if any? It is carried.

Amendment 127, a government motion.

**Ms Wynne:** I move that section 88 of schedule A to the bill, amending the Mental Health Act, be amended by adding the following subsection:

“(5.1) The following provisions of the act are amended by striking out ‘clinical record’ wherever it appears and substituting in each case ‘record of personal health information’:

“1. Subsection 35(5).

“2. Subsection 35(6).

“3. Subsection 35(7).”

1520

**The Chair:** Questions or comments?

Seeing none, those in favour of amendment 127; against, if any? Seeing none, it is carried.

Amendment 128, a government motion.

**Ms Wynne:** I move that section 88 of schedule A to the bill, amending the Mental Health Act, be amended by adding the following subsection:

“(5.2) Subsection 35(8.1) of the act, as enacted by Statutes of Ontario, 1992, chapter 32, section 20, is repealed.”

**The Chair:** Questions or comments?

**Ms Perun:** To the extent that this particular section already resides in the complementary amendments that were made, it needed to be repealed in the main act. The only reason it was re-introduced in amendments is because the reference to “clinical record” was changed to “record of personal health information” and so exactly



the same provision appears in subsection 88(5) and the new subsection 35(3).

**The Chair:** Any more questions? Those in favour of motion 128? Against? None. It is carried.

Amendment 129, a government motion.

**Ms Wynne:** I move that subsection 88(6) of schedule A to the bill, amending subclause 35(9)(b)(i) of the Mental Health Act, be struck out and the following substituted:

“(6) Subsection 35(9) of the act, as re-enacted by the Statutes of Ontario, 1992, chapter 32, section 20 and amended by 1996, chapter 2, section 72, is repealed and the following substituted:

“Disclosure in proceeding

“(9) No person shall disclose in a proceeding in any court or before any body any information in respect of a patient obtained in the course of assessing or treating the patient, or in the course of assisting in his or her assessment or treatment, or in the course of employment in the psychiatric facility, except,

“(a) where the patient is mentally capable within the meaning of the Personal Health Information Protection Act, 2003, with the patient’s consent;

“(b) where the patient is not mentally capable, with the consent of the patient’s substitute decision-maker within the meaning of the Personal Health Information Protection Act, 2003; or

“(c) where the court or, in the case of a proceeding not before a court, the Divisional Court determines, after a hearing from which the public is excluded and that is held on notice to the patient or, if the patient is not mentally capable, the patient’s substitute decision-maker referred to in clause (b), that the disclosure is essential in the interests of justice.”

**The Chair:** Questions or comments? Comments from the staff?

**Ms Perun:** I just wanted to explain that the only change here is that the words “mentally competent” are replaced with “mentally capable.” Also, it’s within the meaning of the Personal Health Information Protection Act. That’s in clause (a) and clause (b).

Then in clause (c) “mentally competent” was changed to “mentally capable.” The patient’s substitute decision-maker is the one that’s referred in clause (b), meaning the substitute decision-maker within the meaning of the Personal Health Information Protection Act. Otherwise, there is no change in policy here.

**The Chair:** Other questions or comments? If none, those in favour of amendment 129? Against, if any? I don’t see any. It is carried.

Amendment 130, a government motion.

**Ms Wynne:** I move that section 88 of schedule A to the bill, amending the Mental Health Act, be amended by adding the following subsection:

“(6.1) Subsection 35(12) of the act, as enacted by Statutes of Ontario, 1996, chapter 2, section 72, is repealed.”

**The Chair:** Questions or comments? If none, in favour of amendment 130? Against, if any? It is carried.

Amendment 131, a government motion.

**Ms Wynne:** I move that subsection 88(7) of schedule A to the bill, amending the Mental Health Act, be struck out and the following substituted:

“(7) Section 36 of the act, as amended by the Statutes of Ontario, 1992, chapter 32, section 20, 1996, chapter 2, section 72 and 2000, chapter 9, section 18, is repealed and the following substituted:

“Patient access to clinical record

“36. Despite subsection 88(7) of schedule A to the Health Information Protection Act, 2003, this section, as it read immediately before that subsection came into force, continues to apply to a request for access that a patient made under this section before that subsection came into force.”

**Ms Perun:** Just to explain, this is a purely transitional provision that was missed. There was a transitional provision in the Long-Term Care Act amendments that dealt with this issue. Basically, if a patient has made an access request under the Mental Health Act, it should just finish and the new rules shouldn’t start kicking in. The access request should simply be finished under the old rules for that particular access request.

**The Chair:** Questions or comments? If none, those in favour of amendment 131? Against, if any? It is carried.

Amendment 132, a government motion.

**Ms Wynne:** I move that section 88 of schedule A to the bill, amending the Mental Health Act, be amended by adding the following subsection:

“(15.1) Clause 81(1)(c) of the act is repealed and the following substituted:

“(c) prescribing additional duties of officers designated and persons appointed under subsection 9(1) and governing communication concerning patients between officers designated and persons appointed under subsection 9(1) and health care providers;”

**The Chair:** Any clarification?

**Ms Perun:** This is the motion that is to address the issue raised by the Psychiatric Patient Advocate Office that their advocates have access to information about their clients in terms of being able to communicate with health care providers about their clients. These are section 9 appointments under the Mental Health Act, so therefore we thought that a better way of approaching this issue is to create a regulation, in consultation with that office, to address their ability to speak to providers. The proposal is to do a regulation to address their issue.

**The Chair:** Any questions or comments? If none, in favour of amendment 132? Against? It is carried.

Amendment 133, a government motion.

**Ms Wynne:** I move that subsection 88(16) of schedule A to the bill, amending section 81 of the Mental Health Act, be struck out.

**The Chair:** Any questions or comments?

**Ms Wynne:** Is there a clarification?

**Ms Perun:** Basically, there is already a change that was made in the Mental Health Act regulations at clause 81(1)(j). It provided for broader regulation-making powers in any event, so subsection 88(16) isn’t necessary.

**The Chair:** Any other comments or questions? If none, those in favour of amendment 133? Against? It is carried.

Amendment 134, a government motion.

**Ms Wynne:** I move that subsection 88(19) of schedule A to the bill, re-enacting clause 81(1)(k.2) of the Mental Health Act, be struck out and the following substituted:

“(19) Clause 81(1)(k.2) of the act, as enacted by the Statutes of Ontario, 1996, chapter 2, section 72, is repealed.”

**Ms Perun:** Clause (k.2) is already dealt with in the main bill. There's a general regulation-making power to govern the giving or refusing of consent by substitute decision-makers with respect to the information portions of the legislation, so it was not needed.

**The Chair:** Any questions or comments? Seeing none, in favour of amendment 134? Against? It is carried.

Amendment 135.

**Ms Wynne:** I move that subsection 88(20) of schedule A to the bill, amending clause 81(1)(k.3) of the Mental Health Act, be struck out and the following substituted:

“(20) Clause 81(1)(k.3) of the act, as re-enacted by the Statutes of Ontario, 2000, chapter 9, section 30, is amended by striking out ‘clinical record under clause 35(3)(d.1), (e.3), (e.4) or (e.5)’ at the end and substituting ‘record of personal health information under subsection 35 (4)’”.

**The Chair:** Any clarification?

**Ms Perun:** The reg-making power governs the retention of record information. It's also a technical amendment because the reference to “clinical record” had to be changed to “record of personal health information.”

**The Chair:** Other questions or comments? If none, in favour of amendment 135? Against? It is carried.

Shall section 88 of schedule A, as amended, carry? It is carried.

Section 88.1: government motion 136.

1530

**Ms Wynne:** I move that schedule A to the bill be amended by adding the following section:

“Municipal Freedom of Information and Protection of Privacy Act

“Municipal Freedom of Information and Protection of Privacy Act

“88.1 Subsection 26(2) of the Municipal Freedom of Information and Protection of Privacy Act is repealed and the following substituted:

“Contents of report

“(2) A report made under subsection (1) shall specify,

“(a) the number of requests under this act or the Personal Health Information Protection Act, 2003 for access to records made to the institution;

“(b) the number of refusals by the head to disclose a record, the provisions of this act or the Personal Health Information Protection Act, 2003 under which disclosure was refused and the number of occasions on which each provision was invoked;

“(c) the number of uses or purposes for which personal information is disclosed if the use or purpose is not

included in the statements of uses and purposes set forth under clauses 34(1)(d) and (e) or the written public statement provided under subsection 16(1) of the Personal Health Information Protection Act, 2003;

“(d) the amount of fees collected by the institution under section 45 or under subsection 52(9) of the Personal Health Information Protection Act, 2003; and

“(e) any other information indicating an effort by the institution to put into practice the purposes of this act or the Personal Health Information Protection Act, 2003.”

**The Chair:** Questions or comments? I see none.

Those in favour of amendment 136? Against, if any? It is carried.

Section 89: amendment 137, a government motion.

**Ms Wynne:** I move that subsection 89(2) of schedule A to the bill, amending subsection 20.2(1) of the Nursing Homes Act, be struck out.

**The Chair:** Questions, comments or explanations? None?

**Ms Perun:** Three long-term care statutes have the same amendment. We had already dealt with one, with the Charitable Institutions Act and the homes for the aged, actually. This is the last one of the three, the Nursing Homes Act. Effectively, the amendment that was in there was inconsistent with the policy of the bill itself in terms of disclosure for the purposes of health care to be on an implied consent, as opposed to no consent.

**The Chair:** Any other comments or questions? I see none.

Those in favour of amendment 137? Against? I see none. It is carried.

Amendment 138, a government motion.

**Ms Wynne:** I move that subsection 89(4) of schedule A to the bill, amending section 38 of the Nursing Homes Act, be struck out and the following substituted:

“(4) Section 38 of the act, as amended by the Statutes of Ontario, 1993, chapter 2, section 43, 1994, chapter 26, section 75, 1996, chapter 2, section 74 and 1997, chapter 15, section 13, is amended by adding the following subsections:

“Exception

“(4) A regulation made under paragraph 18 of subsection (1) shall not apply to a record of personal health information within the meaning of the Personal Health Information Protection Act, 2003.

“Same

“(5) Despite subsection (4), a regulation made under paragraph 18 of subsection (1) that relates to the security, retention or disposal of a record of personal health information within the meaning of the Personal Health Information Protection Act, 2003 applies to the extent that the regulation is consistent with that act and the regulations made under it.”

**The Chair:** Questions or comments? I see none.

Those in favour? Against, if any? It is carried.

Shall section 89 of schedule A, as amended, carry? Against? It is carried.

Shall section 90 of schedule A carry? Those in favour? Against? It is carried.



Section 90.1: amendment 139, a government motion.

**Ms Wynne:** I move that schedule A to the bill be amended by adding the following section:

“Ombudsman Act

“Ombudsman Act

“90.1 Section 19 of the Ombudsman Act is amended by adding the following subsection:

“Providing personal information despite privacy acts

“(3.1) A person who is subject to the Freedom of Information and Protection of Privacy Act or the Personal Health Information Protection Act, 2003 is not prevented by any provisions in those acts from providing personal information to the Ombudsman, when the Ombudsman requires the person to provide the information under subsection (1) or (2).”

**The Chair:** Questions or comments?

Seeing none, those in favour of amendment 139? Against? Seeing none, it is carried.

Sections 91, 92 and 93: Shall those three sections carry? They are carried.

Section 94: amendment number 140, a government motion.

**Ms Wynne:** I move that section 94 of schedule A to the bill, amending the Trillium Gift of Life Network Act, be amended by adding the following subsection:

(1.1) Section 5 of the act, as amended by the Statutes of Ontario, 1999, chapter 6, section 29, is amended by adding the following subsection:

“Consent is full authority, personal information

“(4.1) The authority to give consent under this section includes the authority to consent to the collection, use or disclosure of personal information that is necessary for, or ancillary to, a decision about the gift.”

**The Chair:** Questions or comments? Seeing none, those in favour of amendment 140? Against, if any? Seeing none, it is carried.

Shall section 94 of schedule A carry, as amended? It is carried.

Section 95: amendment 141, an NDP motion.

**Ms Martel:** I gather there is going to be a change here and a recognition that we have to extend, probably to January 1, 2005. But there's a portion in the government bill that's not included in mine, so I will withdraw mine and let the government move theirs, then.

**The Chair:** So?

**Ms Martel:** I'm going to withdraw mine on the understanding that the government is going to be moving an amendment that will substitute July 1, 2004, with January 1, 2005, which is what I wanted to have done. But there is an additional section that I don't have that they do. So I will allow the government—I withdraw mine.

**The Chair:** So you'll withdraw this one. Ms Martel withdraws amendment 141.

We'll move on to amendment 142, a PC amendment.

**Mrs Witmer:** I move that section 95 of schedule A to the bill be struck out and the following substituted:

“Commencement

“95. This schedule comes into force on January 1, 2005.”

**The Chair:** Questions or comments? Seeing none, those in favour of the PC motion? Against? Five against, one abstains, so the motion is defeated.

Amendment 143, a government motion.

**Mr Fonseca:** I move that section 95 of schedule A to the bill be struck out and the following substituted:

“Commencement

“95(1) This section and sections 71, 72 and 96 come into force on the day the Health Information Protection Act, 2003 receives royal assent.

“Same

“(2) Sections 1 to 70 and 73 to 94 come into force on September 1, 2004.”

**Ms Martel:** Chair, I'm going to move an amendment to subsection 95(2), then, which would state that, “Sections 1 to 70 and 73 to 94 come into force on January 1, 2005.”

**The Chair:** So we have an amendment to the amendment, moved by Ms Martel. We'll vote. Any questions or comments on that?

**Mrs Witmer:** Obviously, that was the intent of our motion, which was voted down. We were told repeatedly by people who appeared before this committee that the July date that was being suggested, July 1, 2004, was totally unrealistic and that at least another six months was required. So obviously, we now are going to be supporting that, with the amendment to the amendment. OK, we'll go as is, but certainly that was the intention of our motion.

1540

**The Chair:** Any other comments?

**Ms Wynne:** Just to clarify, there was another piece to this motion. That was why we went with this motion, with the understanding that we were open to January 1.

**The Chair:** Other questions or comments?

If not, we'll vote on the amendment to the amendment moved by Ms Martel. In favour? Unanimous. It is carried as amended.

We'll move the amendment, as amended. In favour? It is carried.

Shall section 95 of schedule A, as amended, carry? Carried.

Shall Section 96 of schedule A carry? Against? Carried.

Shall schedule A, as amended, carry? Against? It is carried.

Schedule B, Quality of Care Information Protection Act, 2003, section 1: There is amendment 144, a government amendment.

**Mr Fonseca:** I move that clauses (b) and (c) of the definition of “quality of care committee” in section 1 of the Quality of Care Information Protection Act, 2003 be struck out and the following substituted:

“(b) that meets the prescribed criteria, if any, and that is designated, in a manner that may be prescribed by the regulations, as a quality of care committee by the health facility or entity that established, appointed or approved it, and

“(c) whose functions are to carry on activities for the purpose of studying, assessing or evaluating the provision of health care with a view to improving the quality of the health care or the level of skill, knowledge and competence of the persons who provide the health care, where the health care is provided in or by the health facility or the entity that established, appointed or approved the committee or the health facilities or entities that are described in the designation of the committee; (“comité de la qualité des soins”)

**The Chair:** Questions or comments?

**Ms Martel:** Just a quick question. Is this meant to cover off quality of care committees in long-term-care facilities and that information that the regulated professions hold? Because we were asked to change that so their information as well would not be disclosed. This is what this does, I’m assuming?

**Mr Orr:** This does not relate to the issue of long-term-care facilities or the regulated professions. The issue of long-term-care facilities is left to the regulations as to who else will be covered, apart from public hospitals and people who are defined as health facilities under this act.

As far as the regulated health professions go, there is a complementary amendment being added to the Quality of Care Information Protection Act, which will address quality of care in that context.

The changes to this section are quite minimal. To clause (b) we’re adding “that meets the prescribed criteria,” which simply allows the government to exercise a little more control over what can be considered to be a quality of care committee to prevent the protections of this act from applying in an overly broad manner.

In clause (c) there’s the addition of the words, around the middle of the clause, that said “where the health care is provided in or by the health facility.” It used to just say “by the health facility” and we’ve added the words “in or by the health facility.” It’s just a little more comprehensive.

**Ms Martel:** Thanks.

**The Chair:** Other questions or comments? Seeing none, those in favour of amendment 144? Against? It is carried.

Amendment 145, a government motion.

**Mr Fonseca:** I move that clause (e) of the definition of “quality of care information” in section 1 of the Quality of Care Information Protection Act, 2003 be struck out and the following substituted:

“(e) information contained in a record that is required by law to be created or to be maintained,”

**The Chair:** Questions or comments? Seeing none, in favour? Against? It is carried.

Amendment 146, a government motion.

**Mr Fonseca:** I move that clause (f) of the definition of “quality of care information” in section 1 of the Quality of Care Information Protection Act, 2003 be amended by striking out “information contained in a record” at the beginning and substituting “facts contained in a record”.

**The Chair:** Questions or comments? Seeing none, in favour of the amendment? Against? It is carried.

Amendment 147, a government motion.

**Mr Fonseca:** I move that clause (a) of the definition of “witness” in section 1 of the Quality of Care Information Protection Act, 2003 be struck out and the following substituted:

“(a) is examined or cross-examined for discovery, either orally or in writing,”

**The Chair:** Questions or comments? Seeing none, in favour of the amendment? Against? It is carried.

Shall section 1 of schedule B, as amended, carry? Those in favour? Against? It is carried.

Section 2: amendment 148, a PC motion.

**Mrs Witmer:** In light of our conversation, we would withdraw this motion.

**The Chair:** Mrs Witmer withdraws this motion.

Shall section 2 of schedule B carry? In favour? Getting tired, I guess. Against? Carried.

Amendment 149, an NDP motion.

**Ms Martel:** This was to try and ensure that quality assurance programs of the federated colleges were protected. You’re doing this somewhere else?

**Ms Perun:** In the government motions later on—

**Ms Martel:** I’m glad that you’re accepting my ideas, so I’ll withdraw and we can move to it later on.

**The Chair:** Ms Martel withdraws amendment 149.

**Mr Fonseca:** Mr Chair, if I could request a 10-minute break.

**The Chair:** Before we move on to section 3?

**Mr Fonseca:** Yes.

**The Chair:** Just a second, before we do that, did we say we would adjourn at four o’clock? We need a unanimous decision if we carry on past four o’clock.

**Mr Fonseca:** I would request an extension.

**The Chair:** There’s not much left. It’s just that we’re going past four o’clock with a 10-minute recess.

You want a 10-minute recess; is that what you’re asking for?

**Mr Fonseca:** Yes.

**The Chair:** Do we agree to carry on until 4:30 afterwards? We don’t need a motion for that? We’ll carry on, even though it’s after four o’clock.

**Mr Fonseca:** Thank you.

**The Chair:** We’ll recess for 10 minutes.

*The committee recessed from 1548 to 1559.*

**The Chair:** Now we’ll move on to—is it amendment 149? Have we done that one? We’ve done it.

Then we’ve got section 3. Shall section 3 of schedule B carry? We got a rest there. We should be able to vote now. In favour? Against? It is carried.

Shall section 4 of schedule B carry? Against? It is carried.

Shall section 5 of schedule B carry? It is carried.

Shall section 6 of schedule B carry? Carried

Shall section 7 of schedule B carry? Carried.

Section 8: amendment 150, a government motion.

**Mr Fonseca:** I move that subsection 8(3) of the Quality of Care Information Protection Act, 2003 be amended by striking out “for damages”.



**The Chair:** Questions or comments? Seeing none, in favour? Against, if any? It is carried.

Shall section 8 of schedule B carry? Against? It is carried.

**Clerk of the Committee:** As amended.

**The Chair:** As amended, yes. Thank you.

Section 9: It's government motion 151.

**Mr Fonseca:** I move that subsection 9(1) of the Quality of Care Information Protection Act, 2003 be amended by adding the following clauses:

"(c.1) prescribing criteria that a body must meet to be designated as a quality of care committee and the manner in which a quality of care committee may be designated by the health facility or entity that established, appointed or approved it;

"(c.2) specifying a provision of another act or its regulations that prevails over this act or its regulations for the purpose of section 2."

**The Chair:** Questions or comments? I see none. All in favour of amendment 151? Against, if any? It is carried.

Shall section 9 of schedule B, as amended, carry? It is carried.

**Ms Martel:** Can I interrupt? I'm sorry. It's something I've missed; my apologies to the committee. This goes back to the offence section, section 7. We had a discussion in the other bill about "guilty of an offence" and "guilty of an offence." In this section, you actually have the same language. I'm looking on page 89 of the bill, subsections 7(2) and 7(3). In penalties, "A person who is guilty of an offence" and then under the directors, you have, "If a corporation is guilty of an offence." I'm just wondering why you used the same terminology in schedule B, and in schedule A, when we came to the penalty section, you actually had different terminology.

**Mr Orr:** I don't think we can really answer that here. I think we're going to have to look at it.

**Ms Martel:** I just found it; it's on page 62 of schedule A. In the penalty section you have, "A person who is guilty" and then in "Officers" you have, "If a corporation commits an offence."

**Mr Orr:** I understand what you're saying. I think there is an inconsistency there, and we're going to have to look at it.

**The Chair:** Section 10: Shall section 10 of schedule B carry? Against? It is carried.

Section 10.1: amendment 152, a PC amendment.

**Mrs Witmer:** In light of the discussions and changes made to the regulated health professions' concerns, I withdraw that amendment.

**The Chair:** So amendment 152 has been withdrawn by Mrs Witmer.

Amendment 153, a government motion.

**Mr Fonseca:** I move that schedule B to the bill be amended by adding the following section:

"Amendments to Regulated Health Professions Act, 1991

"Regulated Health Professions Act, 1991

"10.1 (1) Subsection 83(5) of schedule 2 to the Regulated Health Professions Act, 1991, as enacted by the

Statutes of Ontario, 1998, chapter 18, schedule G, section 19, is repealed.

"(2) Schedule 2 to the act is amended by adding the following section:

"Definitions

"83.1(1) In this section,

"disclose' means, with respect to quality assurance information, to provide or make the information available to a person who is not,

"(a) a member of the quality assurance committee,

"(b) an assessor appointed by the committee, a person engaged on its behalf such as a mentor or a person conducting an assessment program on its behalf, or

"(c) a person providing administrative support to the committee or the registrar or the committee's legal counsel,

"and 'disclosure' has a corresponding meaning; ('divulguer,' 'divulgation')

"proceeding' includes a proceeding that is within the jurisdiction of the Legislature and that is held in, before or under the rules of a court, a tribunal, a commission, a justice of the peace, a coroner, a committee of a college under the Regulated Health Professions Act, 1991, a committee of the board under the Drugless Practitioners Act, a committee of the college under the Social Work and Social Service Work Act, 1998, an arbitrator or a mediator, but does not include any activities carried on by the quality assurance committee; ('instance')

"quality assurance information' means information that,

"(a) is collected by or prepared for the quality assurance committee for the sole or primary purpose of assisting the committee in carrying out its functions,

"(b) relates solely or primarily to any activity that the quality assurance committee carries on as part of its functions,

"(c) is prepared by a member or on behalf of a member solely or primarily for the purpose of complying with the requirements of the prescribed quality assurance program,

"(d) is provided to the quality assurance committee under subsection (3), or

"(e) satisfies the criteria for quality assurance information specified by the regulations,

"but does not include,

"(f) the name of a member and allegations that the member may have committed an act of professional misconduct, or may be incompetent or incapacitated,

"(g) information that was referred to the quality assurance committee from another committee of the college or the board, or

"(h) information that the regulations specify is not quality assurance information; ('')

"witness' means a person, whether or not a party to a proceeding, who, in the course of the proceeding,

"(a) is examined for discovery, either orally or in writing,

"(b) makes an affidavit, or

“(c) is competent or compellable to be examined or cross-examined or to produce a document, whether under oath or not. (‘témoin’)

“Conflict

“(2) In the event of a conflict between this section and a provision under any other act, this section prevails unless it specifically provides otherwise.

“Disclosure to quality assurance committee

“(3) Despite the Personal Health Information Protection Act, 2003, a person may disclose any information to the Quality Assurance Committee for the purposes of the committee.

“Quality assurance information

“(4) Despite the Personal Health Information Protection Act, 2003, no person shall disclose quality assurance information except as permitted by the Regulated Health Professions Act, 1991, including the Health Professions Procedural Code that is schedule 2 to that act or an act named in schedule 1 to that act or regulations or by-laws made under the Regulated Health Professions Act, 1991 or under an act named in schedule 1 to that act.

“Non-disclosure in proceeding

“(5) No person shall ask a witness and no court or other body conducting a proceeding shall permit or require a witness in the proceeding to disclose quality assurance information except as permitted or required by the provisions relating to the quality assurance program.

“Non-admissibility of evidence

“(6) Quality assurance information is not admissible in evidence in a proceeding.

“Non-retaliation

“(7) No one shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage a person by reason that the person has disclosed information to a quality assurance committee under subsection (3).

“Immunity

“(8) No action or other proceeding may be instituted against a person who in good faith discloses information to a quality assurance committee at the request of the committee or for the purposes of assisting the committee in carrying out its functions.

“(3) Subsection 95(1) of schedule 2 to the act, as re-enacted by the Statutes of Ontario, 1998, chapter 18, schedule G, section 23, is amended by adding the following clauses:

“(r.1) specifying criteria for quality assurance information for the purposes of subsection 83.1(1);

“(r.2) specifying information that is not quality assurance information for the purposes of subsection 83.1(1);”

1610

**The Chair:** Are there any comments or questions? Seeing none, all those in favour of amendment 153? Against, if any? I see none. It is carried.

**Ms Wynne:** Sorry, I lost track. Did we vote on amendments 150 and 151?

**The Chair:** Yes, we did.

**Ms Wynne:** OK. Sorry.

**The Chair:** Section 11: amendment 154, a government motion.

**Mr Fonseca:** I move that section 11 of schedule B to the bill be struck out and the following substituted:

“Commencement

“11(1) This section and sections 9, 10 and 12 come into force on the day the Health Information Protection Act, 2003 receives Royal Assent.

“Same

“(2) Sections 1 to 8 come into force on September 1, 2004.”

**The Chair:** Questions or comments?

*Interjection.*

**Ms Martel:** I'd probably move an amendment because we are not going to be consistent with schedule A. So I move an amendment that it comes into force on January 1, 2005.

**The Chair:** We have an amendment to the amendment that sections 1 to 8 come into force on January 1, 2005. Questions or comments? If none, we will vote on the amendment to the amendment. Those in favour of the amendment to the amendment? Against? There aren't any. It's unanimous.

Now we'll vote on the amendment, as amended. All in favour? Carried.

Shall section 11 of schedule B carry, as amended? Against? It is carried.

Section 12: Shall section 12 of schedule B carry? Against? Seeing none, it is carried.

Shall schedule B, as amended, carry? Against? It is carried.

So we've got to go back to the actual bill. We are now dealing with the bill itself. Section 1, which is “The Personal Health Information Protection Act, 2003 as set out in schedule A, is hereby enacted.” All in favour? Agreed? Against? It is carried.

Section 2: “The Quality of Care Information Protection Act, 2003, as set out in schedule B, is hereby enacted.” All in favour? Carried.

Section 3: “Commencement:

“3(1) Subject to subsections (2) and (3), this act comes into force on the day it receives Royal Assent.”

Shall it carry? All agreed? Carried.

Section 4: “The short title of this act is the Health Information Protection Act, 2003.” Shall section 4 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 31, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

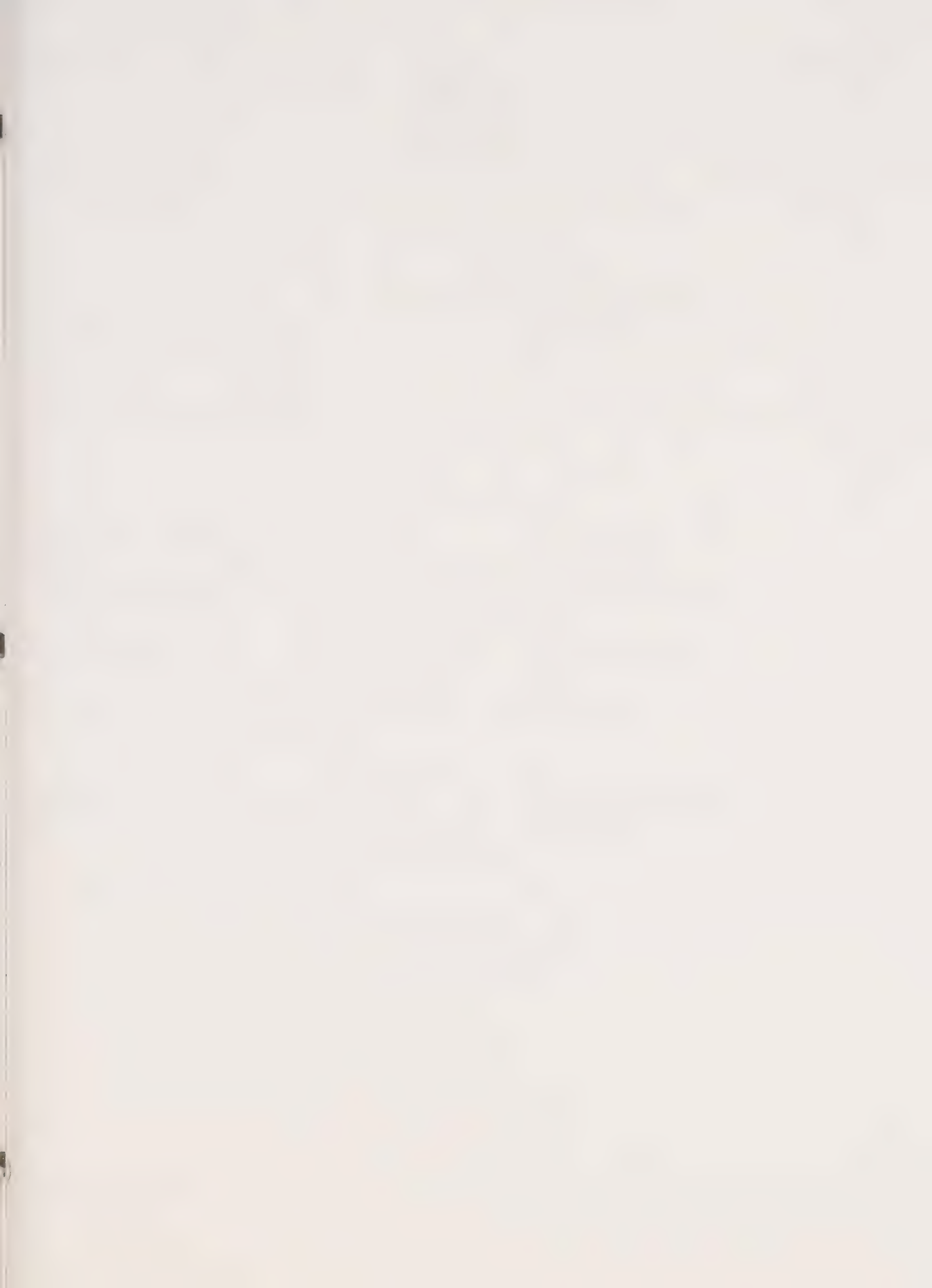
This concludes the clause-by-clause. I thank you very much for your co-operation. We've done it in one day instead of three days. Thank you to the staff, also.

So there won't be any meeting tomorrow and Wednesday. Once again, to all the minister's staff, thank you very much for your support and the explanations.

*The committee adjourned at 1615.*









## CONTENTS

Monday 9 February 2004

**Health Information Protection Act, 2003, Bill 31, *Mr Smitherman* /**

**Loi de 2003 sur la protection des renseignements sur la santé,**

projet de loi 31, *M. Smitherman* ..... G-203

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20N  
16  
G23



G-9

G-9

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## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 31 March 2004

# Journal des débats (Hansard)

Mercredi 31 mars 2004

Standing committee on  
general government

Notice of motion

Comité permanent des  
affaires gouvernementales

Avis de motion



Chair: Jean-Marc Lalonde  
Clerk: Tonia Grannum

Président : Jean-Marc Lalonde  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 31 March 2004

Mercredi 31 mars 2004

*The committee met at 1534 in room 151.*

## SUBCOMMITTEE REPORT

**The Chair (Mr Jean-Marc Lalonde):** Good afternoon and welcome to the standing committee on general government. We are here this afternoon on a notice of motion to the committee from Marilyn Churley.

The first item on the agenda would be the report of the subcommittee.

**Mr Jeff Leal (Peterborough):** I am pleased to report, on behalf of the subcommittee, that the committee split the 30-minute allotted debate time under standing order 124 equally among the three caucuses and that each caucus may use their 10 minutes as they see fit.

**The Chair:** Any comments?

**Ms Marilyn Churley (Toronto-Danforth):** Only that we had a subcommittee meeting and I did agree to that.

**Mr John R. Baird (Nepean-Carleton):** I can just feel the love and agreement. All three political parties agreed, and I hope that's the beginning of a great working relationship for the good people of Ontario.

**The Chair:** Once again, each party will get 10 minutes. A party can take the 10 minutes all at once, or I could give a member the chance to speak on two occasions, as long as they don't use the whole 10 minutes. If the Progressive Conservative members want to use the 10 minutes—they have three members—a member cannot speak more than twice, but they could use the 10 minutes. Is that clear?

**Ms Churley:** Can I clarify? My colleague Mr Prue will be speaking as well. Because it's my motion, I will of course open, and then I would like to have another opportunity at the end to close.

**The Chair:** You will.

**Ms Churley:** That's good. Thank you.

**The Chair:** Is the motion on the subcommittee report carried? Carried.

I will give the mike to Ms Churley.

## NOTICE OF MOTION

Consideration of the designated matter pursuant to standing order 124.

**Ms Churley:** The notice of motion to the general government committee is, "that the standing committee on general government convene to examine the propriety of actions taken, or not taken, by Finance Minister Greg

Sorbara, political staff in Mr Sorbara's office, senior ministry staff and various officials at the Ontario Securities Commission on matters related to the OSC investigation of Royal Group Technologies.

**The Chair:** We'll start the time now.

**Ms Churley:** I consider this matter before us today very serious. My experience in this Legislature over many years, both in government and in opposition, is that when a cabinet minister, and in this case a cabinet minister who is the finance minister, is caught up in the kinds of accusations that are swirling around him, the precedent has been that the minister, for far lesser sins or accusations, has stepped aside until investigations have been completed. That's been my experience here.

In this case, the Premier and the minister chose not to do that. They continue to say there has been no wrongdoing. We, as an NDP caucus, determined that the best course of action for all of us to get to the bottom of this very serious matter—instead of tying up the Legislature at this point and asking a lot of questions about it where we get the same answers anyway, not surprisingly—would be to take it out of that forum and into this committee. Of course, as you know, the general government committee oversees the finance minister and ministry. We put this forward as a constructive approach to deal with the many questions swirling around Mr Sorbara, the Minister of Finance, at this time.

As you know, both the Premier and the minister have been denying any wrongdoing and saying that Mr Sorbara is not part of any investigation. I would submit that if that is the case, allowing this legislative committee to examine all aspects that you will see before you, and I don't have time to read them all out—and all the questions that have come before the Legislature and indeed outside in the media, from my colleague Mr Prue, who is with us today.

Since I wrote this letter, it has come to our attention—the Conservative Party brought it up in the Legislature, and it was in the media—that the finance minister was removed from his responsibility after he was removed from the OSC, which we all knew about, after the information came to light. He's also been quietly removed from his duties overseeing the Toronto Stock Exchange and the Toronto Futures Exchange. That opens up the question even more, and there are a number of other questions I would add to the list.

This is an opportunity as well for all the members to exercise their right, as individual members, to start deal-



ing with the so-called democracy deficit that the Premier and the Liberal Party talked about in the election, and allow this committee to do its job and examine the issues before us and the questions I've put forward in this motion.

I believe Mr Sorbara, the finance minister, said publicly that he's willing to come forward and give his side of the story. This would be a good opportunity—in fact, a perfect opportunity—for him to come forward and not only clear the air around this matter, but also there are a number of alarming things that happened in this whole incident. It may be an opportunity for this committee to actually delve into some of the problems that exist and perhaps put forward some recommendations so that this kind of thing doesn't happen again.

1540

I submit to the committee that this is an important forum where we can have witnesses come forward, including the finance minister and all of the others involved, and get to the bottom of the incident. It is an opportunity for you, as committee members, to exercise your independence and support this motion today and allow us to move forward.

Thank you. That's all for now, Mr Chair.

**The Chair:** Now I'll move on to the Liberal Party, the government side.

**Mr Leal:** Thank you very much, Mr Chairman. We on this side do take Ms Churley's questions seriously. She has posed six questions to be answered this afternoon and I will respond to each of those six questions.

This first question has to do with vetting disclosure. Ms Churley's question is, "In the vetting process (personal transition disclosure) that is required for all potential cabinet ministers, did Mr Sorbara reveal all aspects of his relationship (including all shares and options) with Royal Group Technologies and its subsidiaries?"

Mr Sorbara already answered this question at a press conference before a cabinet meeting on Wednesday, March 3, 2004. A reporter asked, "Mr Sorbara, in the cabinet vetting procedure, before you were sworn into cabinet, did you ever disclose to those designates of the Premier that there might be some problems in corporate governance or problems that might potentially be embarrassing to the government?" Mr Sorbara responded, "No, absolutely not, because I wasn't aware of any."

Mr Sorbara went through the vetting process for cabinet and properly disclosed not only his relationship with RGT but also his relationship with a large number of other corporations, companies, charities etc.

Minister Sorbara was not made aware of OSC's investigation into RGT until December 22, 2003, more than two months after the vetting process and his subsequent swearing-in to cabinet.

The vetting process required of all potential cabinet ministers is a confidential one, as it should be with all governments of all political stripes.

Management trust: Ms Churley's question is, "Were all proper procedures followed in placing assets related to Royal Group in a 'blind,' management trust, as required

under the Members' Integrity Act? More specifically, why did it take until December 23," 2003, "two months after Mr Sorbara was sworn in as Minister of Finance—and one day after he was alerted by the OSC of their investigation into Royal Group—to establish the trust?"

Answer: The Integrity Commissioner is satisfied with Mr Sorbara's conduct: "No objection can be taken to your conduct as related to your financial disclosures and the statutorily required transfer of your assets to a management trust. Those assets included your shares in Royal."

The minister followed the proper procedures. A private disclosure statement was filed on December 3, 2003, and the minister met with the Integrity Commissioner to review the statement and to discuss the transfer of assets.

Potential conflict of interest: Ms Churley's question is, "Perhaps most importantly, was Mr Sorbara in a conflict of interest for the 66 days between the time he was informed by the OSC of the investigation on December 22, 2003, and the time he was relieved of his responsibilities from the OSC on February 26? More specifically, if there are securities-law-related restrictions on a finance minister's ability to inform the Premier of an OSC investigation that he has been informed of, what are they?"

The minister was correct to not publicly disclose OSC's investigation and to not remove himself, as finance minister, from OSC affairs. I'm quoting from the Integrity Commissioner: "In particular, it would have been wrong for you to have taken it upon yourself to disclose, or to cause the disclosure of the OSC/Royal investigation.... The information about the OSC investigation of Royal ... was confidential.... Removing yourself from OSC affairs would have resulted in frenzied speculation about the reason for your decision.... The fact that you did not contact this office ... does not in my view constitute a breach of the Members' Integrity Act, 1994, or give rise to some more broadly defined conflict of interest. Similarly, your decision not to advise the Premier ... does not constitute a breach of the conflict-of-interest provisions of the Members' Integrity Act, 1994."

The next question Ms Churley posed: Is it commonplace "for the chair of the Ontario Securities Commission to give a 'heads up' to the Minister of Finance of the day on an ongoing OSC investigation? More importantly, is this appropriate behaviour on the part of the OSC chair?"

There was nothing improper about the telephone call from the minister and he did not know the nature of the investigation. As the Ontario Securities Commission has explained, it is normal Ontario Securities Commission practice "for the OSC to contact the Ministry of Finance about matters on which the ministry might be asked to comment." What the investigation was about was not discussed.

Ms Churley's next question: "The OSC and Mr Sorbara have made it clear that they assumed that Royal Group would issue a public release of the investigation within days of a December 22, 2003, OSC letter to Royal Group informing the company of the investigation. When the company refused to issue such a release, why didn't

the OSC order the company to do so or go public itself? Aren't there provisions of the Ontario Securities Act that would allow the OSC to do so?"

As the Integrity Commissioner has said, "It was for the OSC or Royal (and to a degree the TSX) to determine when the existence of the OSC investigation would be disclosed."

The Integrity Commissioner also stated that the issue is irrelevant: "I do not think the reason Royal chose not to disclose the OSC's investigation ... is important."

If the member has any questions about why the Ontario Securities Commission did not choose to disclose, they should be directed to the Ontario Securities Commission.

I conclude, Mr Chairman, by responding to those six questions that have been posed by Ms Churley on this particular matter.

**The Chair:** Thank you, Mr Leal.

**Mr Baird:** On a point of order, Mr Chair: Could I just ask my colleague, are you responding on behalf of the government or is this just your own personal preparation?

**Mr Leal:** I'm responding as an independent member of this committee charged with the responsibility to answer six very serious questions.

**Mr Baird:** Who charged you with that responsibility?

**Mr Leal:** I take it upon myself as a member of this committee to—

**Mr Baird:** Thank you.

**The Chair:** Thank you. Now it's the opposition members' side.

**Mr Robert W. Runciman (Leeds-Grenville):** Mr Chairman, we would like to take our time as continuous 10 minutes and share it among myself and Mr Baird.

I want to start off by complimenting the member for Toronto-Danforth for bringing this important motion forward and indicate our support for it.

I, like Mr Baird, am disturbed—I guess that is the polite way of saying it—with respect to Mr Leal reading a prepared statement here today, which is obviously the view of the Premier's Office. I don't think it's too far a reach to conclude that that's what we're hearing today.

In my view that's disturbing, because this Liberal government was supposed to bring a new day for democracy in Ontario. I was hopeful, I have to tell you, knowing Dalton McGuinty for many years and knowing the time he served in opposition on committees of the House, and also knowing Dwight Duncan served on the legislative assembly committee that drafted a report calling for more independence with respect to the operation of committees and a stronger role for government and opposition MPPs in the business of the House and the business of standing committees of the House—of course, what we're seeing here today is a further indication that in many respects that appears to be hollow rhetoric.

If one takes a look at the Liberal campaign document—I'll just read a few comments, page 1, democratic reform, "MPPs used to be respected representatives of people. Now they are bit players manipulated to doing the bidding of the Premier." This is from Dalton

McGuinty. "It doesn't have to be this way ... Nothing inspires me more than the opportunity to combat the cynicism that far too many people feel about Ontario politics." Dalton McGuinty: "Join me in making the Ontario government your government."

On page 7 of that same election platform: "Your MPP should be free to represent your views, not just parrot the views of his or her party. We will make sure all non-Cabinet MPPs are free to criticize,... with the exception of explicit campaign promises."

**1550**

Well, this is an explicit campaign promise that you're reneging on, and we saw that very clearly with the chief whip of the government, Mr Levac, admitting publicly that he was being taken to the woodshed for questioning the operation of a government agency. I think that should concern all of you as individual members. You ran on this platform; you obviously believed in it—I hope you believed in it—when you ran.

Here is another commitment from Mr McGuinty, one that you should be standing behind here today: "We will give more independence and power to legislative committees." Here again, what you're doing is parroting the position of the Premier's office. You say that we've had an opportunity to fully discuss this issue. We've asked at least 20 questions now in the Legislature about this matter, trying to get to the bottom of this issue. There's clearly been orchestrated stonewalling on the part of the government ministers in the House, and we're seeing that stonewalling carried on here today. That is truly disappointing and disillusioning, certainly for the people of Ontario who believed this document and believed that this government was going to be different.

We tried to work with the government, in terms of the programming motion that we agreed to in the fall to try and make this place work differently. It hasn't happened, and clearly it's not going to happen. Remember years ago, Mr Chair, Prime Minister Trudeau said about MPs: "They're nobodies when they leave the Hill. They're nobodies." That's how he described them. Well, in effect what's happening here is, we don't have to leave Queen's Park to be nobodies. The action we're seeing here on this issue makes sure that we're all nobodies in trying to do our job and in representing our various ridings and the issues and the people of our ridings. We should all be ashamed.

This is really the first test of all of you sitting across there, as government members, to stand up and be counted and support a platform that you ran on. This is your test, and we'll see how you perform under a little bit of pressure from the Premier's office. This is an important issue. It deserves a full airing by this committee, in full public view. Mr Baird?

**Mr Baird:** How much time do we have, Mr Chair?

**The Chair:** You still have five minutes.

**Mr Baird:** Thanks. I find this to be an incredibly serious issue. I'll confess to the other members of the committee that I did not request Mr Sorbara's resignation the first day this broke; I refused to. I wanted to get his



side of the story. Many were quick to jump on him, but I did not. In fact, it took the better part of 48 hours before I even responded, because I was concerned and I did want to be fair.

One of our responsibilities as legislators is to hold the government of the day accountable. I just got some background about procedures in the House of Commons, and I thought I'd just read a quote: "The right to seek information from the ministry of the day and the right to hold that ministry accountable are recognized as two of the fundamental principles of parliamentary government." That's what we're here for, and I want to support the resolution by the member for Toronto-Danforth.

I don't think this is exclusively a partisan issue. We're not the only ones who have expressed concerns. We have more than 12 daily newspapers—daily newspapers—in the province of Ontario which have said that Mr Sorbara should resign. Those aren't organs of the Conservative Party. They're respected publications like the Toronto Star, the North Bay Nugget, the Windsor Star and the Toronto Sun, representing a wide geographic and philosophical orientation, who have expressed concern, not just on the actions of Mr Sorbara and Mr McGuinty's response, but on what this means for the standards that you set.

We didn't have any hearings when the Bob Runciman affair came up, because he resigned. We didn't have any hearings with Mr Sampson, because he stepped down. We didn't have any hearings with Mr Wilson, because he stepped down, did a proper investigation, went forth.

I take exception with the member for Peterborough, whom on a personal level I respect. In the vetting process—we know that at the shareholders' meeting of this company last year, significant irregularities were discussed, as well as concerns about other potential irregularities, such as the sale of millions and millions of dollars of product from the Royal Group to another company in St Kitts, controlled by one of the big shareholders.

Those would have been some of the things you would have responded to in a cabinet vetting process. During the cabinet vetting process, to be on the safe side, I reported I got a speeding ticket when I was a teenager. I wouldn't want to see that, I agree with the member for Peterborough, but I'd like the Integrity Commissioner to look at that privately, and I'd like Mr McGuinty to tell us whether he's satisfied with what was reported.

The other issues which were brought up—we know that for 66 days we didn't know that the minister was under investigation. There is an opinion letter; it's not a decision, it's an opinion letter from the conflict commissioner based on the information, and only based on the information, that Mr Sorbara provided him. He didn't tell him that he had brought forward a number of orders in council that he personally signed going to cabinet, with respect to the Ontario Securities Commission. He didn't tell him that he, his office and his ministry had participated in the appointment of the vice-chair of the Ontario Securities Commission. He didn't mention that in his letter. I think it would be kind of important to mention that in the letter.

As well, he didn't make any attempt to deal with one of the most disturbing factors of all this. I've got to presume that when the RCMP is launching a criminal probe, as is the OSC, as is the Canada Revenue Agency—they don't investigate a filing cabinet—they investigate the company and those who directed it. The Premier can't say, none of us can say, whether Mr Sorbara's personal actions are not the subject of an investigation.

We should ask. We should go to the RCMP. I don't think as politicians that would be unacceptable. We should be able to go to Mr Justice Coulter Osborne, a judge, and say, "This is so important, this is so serious. It's about ethical standards. Just for the sake of honesty and transparency, we've got to know. Can you make the inquiries on our behalf?" Frankly, if an opposition member brings something forward against Mr Sorbara with the Integrity Commissioner, he'll have to look into it.

This is I think probably the most serious question of a minister's judgment. Ministers have been brought down for their constituency offices sending a letter about a parking ticket. They've been brought down for their personal spending. They've been brought down for a silly comment they might have made. They were brought down under our government—three ministers who did nothing wrong and were not tangibly related to anything that had gone wrong—just on the basis that you wouldn't want the thought that a minister could be under investigation.

**The Chair:** You have 10 seconds left.

**Mr Baird:** I'm just encouraging all members to support the resolution. Let's just ask these questions. If there's nothing wrong, there's nothing to hide.

**The Chair:** Now I'll go to the NDP side.

**Mr Michael Prue (Beaches-East York):** I want to start off by saying that I level no aspersions, absolutely none, against Mr Sorbara. I don't know, you don't know, what actually went on.

I'm asking the Liberal members opposite to look at what is happening to the Legislature and what is likely to happen to the budget in about six weeks' time. Every day there are three or four or five questions asked in question period on this issue. This is not going to go away. If you don't deal with it here, it will be dealt with every day in the Legislature. That is not, in my view, the place that this should take place.

It is up to this committee to seize, I think, a very real opportunity; that is, an opportunity for the committee to look at this issue dispassionately, an opportunity for us to look at it with cool heads, to ask appropriate questions, to call people before them and interview them, much as other parliamentary committees have done in this Legislature and in the House of Commons in Ottawa.

We can see what's happening with the ongoing investigation in Ottawa. What has happened is, those who have perhaps transgressed are being found out, but those who are innocent are also being found out.

I would hope, on a personal level at least, for Mr Sorbara, that he is cleared by this committee. He is an

honourable man. I would hope that you do the right thing and allow him to be cleared. If you do the opposite—and I listened with some trepidation, although respect, to Mr Leal—it will appear to the public, it will appear to the newspapers that the committee is attempting to shield him, to hide the facts and not let the public get to the bottom. I am afraid that that is the message that's going to be given.

1600

I take this party at its word. You have said that you want to improve this Legislature and the governance of this Legislature. Mr Bryant, the Attorney General, will be travelling the province, trying to show ways to improve the Legislature and the powers of the MPPs. How much do you think the public is going to believe that, how much do you think people are going to make deputations, if your action is to hide the very powers that he is suggesting or to deny the very powers he is suggesting that you get? In my view, you are doing Mr Sorbara a disservice, this Legislature a disservice and the people of Ontario a disservice unless you allow this motion to pass.

**Ms Churley:** I just want to wrap up. I guess I'm pretty disappointed, because I think the member for Peterborough made a slip of the tongue just as—

**The Chair:** Ms Churley, you have about a minute and 45 seconds.

**Ms Churley:** Thank you.

**Clerk of the Committee (Ms Tonia Grannum):** And there's still time—

**Ms Churley:** Oh, the Tories still—I'm sorry.

**Interjection:** The Liberals.

**The Chair:** The government still has four and a half minutes.

**Ms Churley:** Can I wait so I can wrap up, then?

**The Chair:** Yes.

**Ms Churley:** OK. I'm sorry. My mistake.

**The Chair:** Government side. There are four and a half minutes left.

**Mr Leal:** I take this issue certainly very seriously. In public life, there's only one thing you really have. When you come into this business, you have your integrity; when you leave this business, you must retain your integrity. That's all you really have from public life.

Back in the 1980s, I had the privilege of being a special assistant to the late Honourable John Eakins, who was tourism minister and the member for Haliburton-Victoria. That was the first occasion when I got to meet Mr Sorbara, because he was a member of the Peterson cabinet.

Mr Sorbara has always demonstrated to me on all occasions the highest degree of integrity in public life, and on this issue there's no question about his integrity.

The Integrity Commissioner, Coulter Osborne, is an officer of the Ontario Legislature. Unlike the situation that exists in Ottawa today, where Howard Wilson, who's the Ethics Counsellor, only reports to the Prime Minister, the Integrity Commissioner here in Ontario reports to the Ontario Legislature, as an officer of the

Ontario Legislature. He has provided an opinion, a very important opinion, on Mr Sorbara's—

**Mr Baird:** Based on the information provided.

**Mr Leal:** The Integrity Commissioner has provided to all members of the Legislature an opinion on the activities surrounding this particular issue. He has concluded that indeed Mr Sorbara's actions did not create a conflict of interest. I, as one member of this committee, stand by the opinion that's been provided by Justice Coulter Osborne. If indeed members opposite want to pursue this matter, they have every opportunity to write letters to the Integrity Commissioner based on the issues that they want to raise. For that matter, just because questions are asked in the Ontario Legislature, that doesn't mean—just because there's smoke, it doesn't mean there's a fire. The Premier has answered all these questions, in my view, in a very forthright manner.

I hear my friends opposite talking about integrity. I look at this committee in the spirit of non-partisanship, but let me tell you, if indeed they keep this line up, we can start delving into the activities of OPG; we can delve into the activities of Hydro One. I would like to get some explanations as to why that particular organization was not subject to freedom of information.

But to conclude, on behalf of myself, I want to reiterate that Coulter Osborne has provided an opinion on this matter. He's declared Mr Sorbara free of any conflict of interest, and I believe, from this perspective, the matter is closed.

**The Chair:** Thank you, Mr Leal. We still have a minute left for the government side. Yes, Mr Rinaldi?

**Mr Lou Rinaldi (Northumberland):** If there's time, I just want to add to Mr Leal's comments.

I guess, being new in this process, I'm a bit disappointed. I respected Ms Churley's bringing this motion forward. It certainly had some merit. I really, though, I guess, have an objection to Mr Runciman, whom I don't know personally, but through my municipal portion of the government I had a lot of respect for him. To be here and be lectured, not to talk about what we're supposed to be here talking about—I'm really disappointed, bringing back the same old rhetoric.

We have a process in place—

**Mr Baird:** That's not rhetoric; that's your campaign promise.

**Mr Rinaldi:** And we're sticking by our campaign promise.

*Interjections.*

**The Chair:** Order, please.

**Mr Rinaldi:** There's an investigation going on. I think the Premier and Mr Sorbara made it very, very clear that if something comes up—I believe we still live in a society where you're not guilty until you're proven guilty. Let the process go along. I'm not so sure why we're wasting time today.

**The Chair:** The time has just expired on the government side. Ms Churley, you still have a minute and 45 seconds.



**Ms Churley:** The member for Peterborough, Mr Leal, made a slip of the tongue in the same way the government House leader did when he was first asked if he would support this committee reviewing the matter. He said no, they had more important things to do. The next day he came back and said that it was a slip of the tongue. Today the member for Peterborough, when asked a question about whom he was speaking on behalf of, said that he was “charged with” this matter and then tried to cover his tracks. It’s very clear what’s happening here. In fact, the member for Peterborough has been charged with, on behalf of the government, giving the government line today. Of course, you’ve read out the government line, as we’ve heard many times before. I was expecting to hear from the members—

*Interjection.*

**Ms Churley:** Excuse me. Both the—

*Interjection.*

**Ms Churley:** John.

**The Chair:** Would you let Ms Churley explain, please.

**Ms Churley:** I’m just trying to say that even Mr Sorbara said he would be willing to come forward. This is not just about the Integrity Commissioner and the narrow bit of information that he was given by the government itself. This place is about far more than that

narrow view of whatever information is provided to the Integrity Commissioner. It’s about far more than that. There’s far more to integrity and there are far more questions that aren’t answered, and we’re learning more every day. This is not going to go away. If you deny this opportunity today for the committee to examine it, in fact you’re making it worse for the finance minister, because it will not go away.

**The Chair:** Thank you very much. We have taken the whole 30 minutes. Each party has taken their 10 minutes’ time, and now it requires that we go to a vote on the motion.

**Mr Jerry J. Ouellette (Oshawa):** Recorded vote.

**Ayes**

Churley, Ouellette, Runciman.

**Nays**

Dhillon, Leal, Parsons, Rinaldi, Van Bommel, Wynne.

**The Chair:** I declare the motion defeated.

This will adjourn our session.

*The committee adjourned at 1608.*











## CONTENTS

Wednesday 31 March 2004

Subcommittee report .....	G-243
Notice of motion.....	G-243

### STANDING COMMITTEE ON GENERAL GOVERNMENT

#### **Chair / Président**

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Mr John Yakabuski (Renfrew-Nipissing-Pembroke PC)

#### **Substitutions / Membres remplaçants**

Mr Robert W. Runciman (Leeds-Grenville PC)

#### **Also taking part / Autres participants et participantes**

Mr John R. Baird (Nepean-Carleton PC)

Mr Michael Prue (Beaches-East York ND)

#### **Clerk / Greffière**

Ms Tonia Grannum

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Ms Lorraine Luski, research officer,  
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20N  
16  
G23

G-10



G-10

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## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 28 April 2004

# Journal des dÉbats (Hansard)

Mercredi 28 avril 2004

## Standing committee on general government

Health Information  
Protection Act, 2004

## ComitÉ permanent des affaires gouvernementales

Loi de 2004 sur la protection  
des renseignements sur la santé



Chair: Jean-Marc Lalonde  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 28 April 2004

Mercredi 28 avril 2004

*The committee met at 1553 in room 151.*

## COMMITTEE BUSINESS

**The Chair (Mr Jean-Marc Lalonde):** I will call this meeting to order.

The first item we have on the agenda is a motion to amend membership on the subcommittee on committee business.

**Mr Ernie Parsons (Prince Edward-Hastings):** I move that the membership of the subcommittee on committee business be revised as follows: that Mr Renaldi be appointed in the place of Mr Leal.

**The Chair:** In favour? No objection. Carried.

I'd just like to point out that we have three new members on this committee, which was announced yesterday. Mr Wayne Arthurs, Bob Delaney and Deb Matthews have been called to replace members of our committee. Welcome to all those new members.

## SUBCOMMITTEE REPORT

**The Chair:** Now we will proceed with all the amendments that have been—sorry, item number 2: Report of the subcommittee on committee business. Mr Delaney.

**Mr Bob Delaney (Mississauga West):** Thank you, Mr Chair. I'd like to read the report of the subcommittee.

"Your subcommittee met on Wednesday, April 21, 2004 to consider the method of proceeding on Bill 31, An Act to enact and amend various Acts with respect to the protection of health information, and recommends the following:

"1. That the committee meet for the purpose of clause-by-clause consideration of Bill 31 during its regularly scheduled meeting times on Wednesday, April 28, 2004, Monday, May 3, 2004, Wednesday, May 5, 2004 and Monday, May 10, 2004.

"2. That amendments to Bill 31 be received by the clerk of the committee by 5 pm on Monday, April 26, 2004.

"3. That an advertisement be placed on the OntParl channel and the Legislative Assembly Web site.

"4. That the Chair of the committee send a letter to the Minister of Health and Long-Term Care requesting that ministry staff be in attendance during clause-by-clause consideration to answer questions of the committee.

"5. That the clerk of the committee, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings."

**The Chair:** Any questions or comments? None. Everyone is in favour? Carried.

Now, before we go any further, I'd like to thank the ministry staff for all the support and the research they have done to facilitate our task in the amendments. Thank you very much for all the work you have done. I know you contacted quite a few groups and stakeholders, and this will help us in our deliberation.

Also, I think everyone has received a copy of a letter that was just delivered by hand to me about half an hour ago from the Toronto Police Service. I hope you people will have a chance to read it.

HEALTH INFORMATION  
PROTECTION ACT, 2004LOI DE 2004 SUR LA PROTECTION  
DES RENSEIGNEMENTS SUR LA SANTÉ

Consideration of Bill 31, An Act to enact and amend various Acts with respect to the protection of health information / Projet de loi 31, Loi édictant et modifiant diverses lois en ce qui a trait à la protection des renseignements sur la santé.

**The Chair:** The third item is clause-by-clause consideration. I have to say that every member has the right to know what they are voting for, so for this reason I would ask that every amendment has to be read. We know that we have only two hours left of today's time. I would ask Kathleen Wynne if she could proceed in the reading of those amendments. The reason I have chosen Kathleen is we have seen in the past that she is pretty good at it. She's a fast reader and articulates very well.

**Ms Kathleen O. Wynne (Don Valley West):** I'd be happy to do that, Mr Chair. I believe Mr Fonseca, the parliamentary assistant, has a statement that he was going to make.

**The Chair:** Yes, please.

**Mr Peter Fonseca (Mississauga East):** Good afternoon, everyone. I want to thank everybody for your tireless work on this bill and to welcome the new committee members.



It's my pleasure to be here with you today to tell you about our government's commitment to the proposed Health Information Protection Act. As you know, the McGuinty government came to office with a commitment to improve Ontario's health care system. That commitment was based on our belief that public health care is the best health care.

We're determined to protect our universal, publicly funded health care system. And we're determined not only to make it more responsive to people's needs but also to build their confidence in our health system.

We're determined to make health care work for Ontarians by making it more accountable and transparent to the people paying for it.

The committee's process around Bill 31, the Health Information Protection Act—to protect the privacy of the personal health information of each and every Ontarian while ensuring that the information is used carefully and appropriately to improve health care—has been a very rewarding one for all of us.

Ontarians believe the privacy of our health information is vitally important. So do we.

We've listened to those concerns and we're making government work for the people of Ontario by introducing an act that would guarantee that Ontarians would know how and when their health information would be used and disclosed. The ministry reviewed in depth all 93 submissions received, reviewed in depth the presentations at standing committee hearings as outlined in Hansard, and reviewed all letters sent to us by stakeholders subsequent to first and second reading.

The principal concern of the draft Health Information Protection Act is to ensure personal health information is protected when it is being collected, used and shared. If enacted, this legislation will put strong, clear rules in place for consistent protection of personal health information for every Ontarian.

We have endeavoured to the best of our ability to ensure that the legislation did not impede the ability of stakeholders to continue to carry out their functions. It would result in an environment where doctors and other health professionals can continue to deliver high-quality health care while protecting their patient's rights.

Doctors, hospitals, home care providers and other health care stakeholders have been asking for comprehensive health information legislation in Ontario for many years. And we've been working closely with them in developing this legislation.

If this legislation is enacted, the personal health information of all Ontarians will be protected to the greatest possible extent, and health services will be improved to best serve the people of this province. Thank you.

1600

**The Chair:** Thank you, Mr Fonseca. Any comments? No. It was agreed that we stand down 1 to 4, Bill 31. We start clause-by-clause with schedule A, section 1. Ms Wynne?

**Ms Wynne:** I move that the definition of "agent" in section 2 of schedule A to the bill be struck out and the following substituted—

*Interjection.*

**The Chair:** Sorry. We have to vote on every one of them. Shall section 1 carry? Carried. No amendment.

**Ms Wynne:** I move that the definition of "agent" in section 2 of schedule A to the bill be struck out and the following substituted:

"'agent', in relation to a health information custodian, means a person that, with the authorization of the custodian, acts for or on behalf of the custodian in respect of personal health information for the purposes of the custodian, and not the agent's own purposes, whether or not the agent has the authority to bind the custodian, whether or not the agent is employed by the custodian and whether or not the agent is being remunerated; ('mandataire')"

**The Chair:** Shall section 2, definition of "agent," carry? Carried. Shall the amendment carry? Carried.

Section 2, page 2.

**Ms Wynne:** I move that the definition of "inspector" in section 2 of schedule A to the bill be struck out.

**The Chair:** Shall section 2, definition of "inspector," carry, as amended? Carried.

Section 2, definition of "spouse."

**Ms Wynne:** I move that the definition of "spouse" in section 2 of schedule A to the bill be struck out and the following substituted:

"'spouse' means either of two persons who,

"(a) are married to each other, or

"(b) live together in a conjugal relationship outside marriage and,

"(i) have cohabited for at least one year,

"(ii) are together the parents of a child, or

"(iii) have together entered into a cohabitation agreement under section 53 of the Family Law Act,

"unless they are living separate and apart as a result of a breakdown of their relationship; ('conjoint')"

**The Chair:** Shall the amendment of section 2, definition of "spouse," carry? Carried.

Shall section 2 of schedule A be carried, as amended? Carried.

Now, subsection 3(1).

**Ms Wynne:** I move that the definition of "health information custodian" in subsection 3(1) of schedule A to the bill be amended by adding "or organization's" after "person's" in the portion before paragraph 1.

**The Chair:** Shall the section carry, as amended? Carried.

Subsection 3(1), paragraph 2.1.

**Ms Wynne:** I move that the definition of "health information custodian" in subsection 3(1) of schedule A to the bill be amended by adding "or organization's" after "person's" in the portion before paragraph 1.

**The Chair:** Shall subsection 3(1) carry, as amended? Shall the amendment carry? I'll get it—

**Ms Wynne:** I think I might have just read the same one. I'm sorry.

**Interjection:** What page are we on?

**The Chair:** Page 4.

**Ms Wynne:** We're on 5 now. Subsection 3(1), paragraph 2.1. Yes.

I move that the definition of "health information custodian" in subsection 3(1) of schedule A to the bill be amended by adding the following paragraph:

"2.1 A community care access corporation within the meaning of the Community Care Access Corporations Act, 2001."

**The Chair:** Shall the amendment carry? Carried.

Next one: page 6.

**Ms Wynne:** I move that section 3 of schedule A to the bill be amended by adding the following subsection:

"Interpretation, officer in charge

"(1.1) For the purposes of subparagraph 3 i of the definition of 'health information custodian' in subsection (1), the officer in charge of an institution within the meaning of the Mental Hospitals Act shall be deemed to be the person who operates the institution."

**The Chair:** Shall the amendment carry? Carried.

Page 7.

**Ms Wynne:** I move that paragraphs 1 and 2 of subsection 3(2) of schedule A to the bill be struck out and the following substituted:

"1. A person described in paragraph 1, 2 or 4 of the definition of 'health information custodian' in subsection (1) who is an agent of a health information custodian.

"2. A person who is authorized to act for or on behalf of a person that is not a health information custodian, if the scope of duties of the authorized person does not include the provision of health care."

**The Chair:** Shall the amendment carry? Carried.

Page 8.

**Ms Wynne:** Mr Chair, I have a new page 8. Does everyone have the same? OK.

I move that subsections 3(5), (6) and (7) of schedule A to the bill be struck out and the following substituted:

"Single custodian

"(5) Despite subsection (4), the following persons shall be deemed to be a single health information custodian with respect to all the functions described in the applicable paragraph, if any:

"1. A person who operates a hospital within the meaning of the Public Hospitals Act and any of the facilities, programs or services described in paragraph 3 of the definition of 'health information custodian' in subsection (1).

"2. A community care access corporation that provides a community service within the meaning of subsection 2(3) of the Long-Term Care Act, 1994 and acts as a placement coordinator as described in subsection 9.6(2) of the Charitable Institutions Act, subsection 18(2) of the Homes for the Aged and Rest Homes Act or subsection 20.1(2) of the Nursing Homes Act.

"3. Health information custodians or facilities that are prescribed.

"Application to act as one custodian

"(6) A health information custodian that operates more than one facility described in one of the subparagraphs of paragraph 3 of the definition of 'health information

custodian' in subsection (1) or two or more health information custodians may apply to the minister, in a form approved by the minister, for an order described in subsection (8)."

**The Chair:** Any discussion or questions?

**Mr Jerry J. Ouellette (Oshawa):** First of all, the new amendments: When were they received? Because through this process we agreed to a time that was voted on by the subcommittee, and then we would go to our stakeholders. I see there are 10 new amendments listed here. Were they received within the guidelines, and why didn't we receive them before?

**The Chair:** They all came in by the 25th at 5 o'clock.

**Mr Ouellette:** No, the new ones were not received. It wasn't until we arrived here.

**Clerk of the Committee (Ms Tonia Grannum):** But because we're not time allocated, we can still introduce amendments throughout the clause-by-clause process.

**Mr Ouellette:** But the subcommittee agreed to the process. By 5 o'clock yesterday, they had to be—

**Clerk of the Committee:** That's just to help facilitate the proceedings so that we're not sitting now, going through and trying to order all of the amendments. We had a deadline so that the bulk of the amendments came in. These were additional ones that the ministry had.

**Mr Ouellette:** Yes, but they didn't fall within the guidelines. That's why we have votes and timelines, so we can see them. See, the problem here is that we receive amendments and the standard process is to go to our constituents or the stakeholders involved with us to ensure there are no problems with them. Until I arrived here today, I did not receive these or see these. They may have come through at a later time, but being in the House and the other constituency things that are going on, it's difficult to see them. So now we're asked to come here.

Maybe, quite possibly, can we have the staff explain the difference between the two—the original one that was agreed to? Because, quite frankly, we went to our stakeholders and didn't have a lot of problems and it's a little bit of a surprise to see new ones arrive when we're sitting here to vote on them.

**The Chair:** Certainly. Can I have—

**Ms Wynne:** Mr Chair, I just wanted to note that the change between the original motion 8 and the new motion 8 is actually a grammatical change. It was actually a singular becoming a plural. In paragraph 3, "custodian" became "custodians." So it's a very, very minor grammatical change.

**Mr Ouellette:** Yes, but through this process we'll have to address them because we didn't have a chance to review them until we got here and then saw them sitting on our desk. And I don't have a problem with that one.

1610

**The Chair:** I appreciate your comment, too.

Shall the amendment carry, as read? Carried.

**Ms Wynne:** Subsection 3(8).

**The Chair:** Page 9.

**Ms Wynne:** I move that subsection 3(8) of schedule A to the bill be struck out and the following substituted:



"Minister's order

"(8) Upon receiving an application described in subsection (6), the minister may make an order permitting all or some of the applicants to act as a single health information custodian on behalf of those facilities, powers, duties or work that the minister specifies, subject to the terms that the minister considers appropriate and specifies in the order, if the minister is of the opinion that it is appropriate to make the order in the circumstances, having regard to,

"(a) the public interest;

"(b) the ability of the applicants to provide individuals with reasonable access to their personal health information;

"(c) the ability of the applicants to comply with the requirements of this act; and

"(d) whether permitting the applicants to act as a single health information custodian is necessary to enable them to effectively provide integrated health care.

"Scope of order

"(8.1) In an order made under subsection (8), the minister may order that any class of health information custodians that the minister considers to be situated similarly to the applicants is permitted to act as a single health information custodian, subject to the terms that the minister considers appropriate and specifies in the order, if the minister is of the opinion that it is appropriate to so order, having regard to,

"(a) the public interest;

"(b) the ability of the custodians that are subject to the order made under this subsection to provide individuals with reasonable access to their personal health information;

"(c) the ability of the custodians that are subject to the order made under this subsection to comply with the requirements of this act; and

"(d) whether permitting the custodians that are subject to the order made under this subsection to act as a single health information custodian is necessary to enable them to effectively provide integrated health care."

**The Chair:** Shall the amendment carry, as read? Carried.

Shall section 3 of schedule A carry, as amended? Carried.

Page 10.

**Ms Wynne:** I move that clause (a) of the definition of "personal health information" in subsection 4(1) of schedule A to the bill be amended by striking out "medical" and substituting "health".

**The Chair:** Shall the amendment carry? Carried.

Page 11.

**Ms Wynne:** I move that subsection 6(1) of schedule A to the bill be amended by striking out "both persons" and substituting "the custodian".

**The Chair:** Questions or comments? Shall the amendment carry? Sorry, we've gone too far.

**Ms Wynne:** We have to do section 5.

**The Chair:** We're back to section 4.

Shall section 4, as amended, carry? Carried.

Shall section 5, as amended, carry? Carried.

**Ms Wynne:** Now we're doing subsection 6?

**The Chair:** We'll get there. Page 11.

**Ms Wynne:** I move that subsection 6(1) of schedule A to the bill be amended by striking out "both persons" and substituting "the custodian".

**The Chair:** Shall the amendment carry? Carried.

Shall section 6 of schedule A carry, as amended? Carried.

Shall section 7 of schedule A carry? Carried.

Now, page 12.

**Ms Wynne:** I move that subsections 8(2) and (2.1) of schedule A to the bill be struck out and the following substituted:

"Exceptions

"(2) Sections 11, 12, 15, 16, 17 and 33, subsection 35(2) and sections 36 and 44 of the Freedom of Information and Protection of Privacy Act and sections 5, 9, 10, 24, 25, 26 and 34 of the Municipal Freedom of Information and Protection of Privacy Act apply in respect of records of personal health information in the custody or under the control of a health information custodian that is an institution within the meaning of either of those acts, as the case may be, or that is acting as part of such an institution.

"Same

"(2.1) A record of personal health information prepared by or in the custody or control of an institution within the meaning of the Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Protection of Privacy Act shall be deemed to be a record to which clause 32(b) of the Freedom of Information and Protection of Privacy Act or clause 25(1)(b) of the Municipal Freedom of Information and Protection of Privacy Act applies, as the case may be."

**The Chair:** Questions or comments?

Shall the amendment carry? Carried.

Shall section 8 of schedule A, as amended, carry? Carried.

Shall section 9 of schedule A carry? Carried.

Page 13, section 10.

**Ms Wynne:** I move that section 10 of schedule A to the bill be amended by adding the following subsection:

"Providers to custodians

"(4) A person who provides goods or services for the purpose of enabling a health information custodian to use electronic means to collect, use, modify, disclose, retain or dispose of personal health information shall comply with the prescribed requirements, if any."

**The Chair:** Questions or comments?

Shall the amendment carry? Carried.

Shall section 10 of schedule A, as amended, carry? Carried.

Page 14.

**Ms Wynne:** Is there a section 11?

**The Chair:** Sorry. We've got one before that.

Shall section 11 of schedule A carry? Carried.

Page 14.

**Ms Wynne:** I move that subsection 12(2) of schedule A to the bill be amended by adding "Subject to subsection (3) and subject to the exceptions and additional requirements, if any, that are prescribed" at the beginning.

**The Chair:** Questions or comments?

Shall the amendment carry? Carried.

Page 15.

**Ms Wynne:** I move that section 12 of schedule A to the bill be amended by adding the following subsection:

"Exception

"(3) If the health information custodian is a researcher who has received the personal health information from another health information custodian under subsection 43(1), the researcher shall not notify the individual that the information is stolen, lost or accessed by unauthorized persons unless the health information custodian under that subsection first obtains the individual's consent to having the researcher contact the individual and informs the researcher that the individual has given the consent."

**The Chair:** Shall the amendment carry? Carried.

Shall section 12 of schedule A, as amended, carry? Carried.

Shall section 13 of schedule A carry? Carried.

Page 16.

**Ms Wynne:** I move that subsections 14(2) and (3) of schedule A to the bill be struck out and the following substituted:

"(2) A health care practitioner may keep a record of personal health information about an individual in a place other than the individual's home and other than a place in the control of the practitioner if,

"(a) the record is kept in a reasonable manner;

"(b) the individual consents;

"(c) the health care practitioner is permitted to keep the record in the place in accordance with a regulation, bylaw or published guideline under the Regulated Health Professions Act, 1991, an act referred to in schedule 1 to that act, the Drugless Practitioners Act or the Social Work and Social Service Work Act, 1998, if the health care practitioner is described in any of clauses (a) to (c) of the definition of 'health care practitioner' in section 2; and

"(d) the prescribed conditions, if any, are satisfied."

**The Chair:** Shall the amendment carry? Carried.

Shall section 14 of schedule A, as amended, carry? Carried.

Shall section 15 of schedule A carry? Carried.

Shall section 16 of schedule A carry? Carried.

Page 17.

**Ms Wynne:** I move that subsection 17(2) of schedule A to the bill be amended by striking out "or under a".

**The Chair:** Shall the amendment carry? Carried.

Shall section 17 of schedule A, as amended, carry? Carried.

Page 18.

**Ms Wynne:** I move that subsection 18(3.1) of schedule A to the bill be amended by striking out "or" at the end of clause (a) and by adding the following clause:

"(a.1) a disclosure pursuant to clause 31(1)(b); or"

**The Chair:** Shall the amendment carry? Carried.

Page 19.

1620

**Ms Wynne:** I move that the English version of clause 18(4)(b) of schedule A to the bill be struck out and the following substituted:

"(b) that the individual may give or withhold consent."

**The Chair:** Shall the amendment carry? Carried.

Page 20.

**Ms Wynne:** I move that subsection 18(5) of schedule A to the bill be amended by adding "or makes readily available" after "posts".

**The Chair:** Shall the amendment carry? Carried.

Shall section 18 of schedule A, as amended, carry? Carried.

Shall section 19 of schedule A carry? Carried.

Now we're moving on to section 20, page 21.

**Ms Wynne:** I move that subsection 20(2) of schedule A to the bill be amended by adding "2.1" after "2".

**The Chair:** Shall the amendment carry? Carried.

Page 22.

**Ms Wynne:** I move that subsection 20(3) of schedule A to the bill be amended by striking out "2 or" and substituting "2, 2.1 or".

**The Chair:** Shall the amendment carry? Carried.

**Ms Wynne:** I just have one that's French.

**Mr Delaney:** Do you want me to read it?

**The Chair:** He could read it, yes.

**Mr Michael Wood:** I move that the French version of subsection 20(4)—

**The Chair:** Sorry. It has to be a member.

**Ms Wynne:** Mr Delaney's going to read this one.

**Mr Delaney:** I move that the French version of subsection 20(4) of schedule A to the bill be amended by striking out "que le particulier a consenti implicitement à ce que son nom et l'endroit où il se trouve dans l'établissement soient fournis à un représentant de l'organisation religieuse ou de l'autre organisation, sauf si le dépositaire sait que le particulier a expressément refusé ou retiré son consentement" and substituting "qu'il a le consentement implicite du particulier pour que son nom et l'endroit où il se trouve dans l'établissement soient fournis à un représentant de l'organisation religieuse ou de l'autre organisation, à condition que le dépositaire lui ait donné l'occasion de refuser ou de retirer son consentement et que le particulier ne l'ait pas fait".

**Le Président:** Merci. Très bien dit. Très bien lu.

Shall the amendment carry? Carried.

Shall section 20 of schedule A, as amended, carry? Carried.

Section 21, page 24.

**Ms Wynne:** I move that clauses 21(1)(a) and (b) of schedule A to the bill be struck out and the following substituted:



“(a) to understand the information that is relevant to deciding whether to consent to the collection, use or disclosure, as the case may be; and

“(b) to appreciate the reasonably foreseeable consequences of giving, not giving, withholding or withdrawing the consent.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 21 of schedule A, as amended, carry? Carried.

Page 25, section 22.

**Ms Wynne:** I move that the English version of subsection 22(0.1) of schedule A to the bill be amended by striking out “with any requirements” and substituting “with the requirements”.

**The Chair:** Shall the amendment carry? Carried.

Page 26.

**Ms Wynne:** I move that subsection 22(1) of schedule A to the bill be amended by adding at the end “including the information, if any, that is prescribed”.

**The Chair:** Shall the amendment carry? Carried.

Page 27.

**Ms Wynne:** I move that subsection 22(3) of schedule A to the bill be struck out and the following substituted:

“Parties

“(3) The parties to the application are:

“1. The individual applying for the review of the determination.

“2. The health information custodian that has custody or control of the personal health information.

“3. All other persons whom the board specifies.

“Powers of board

“(4) The board may confirm the determination of incapacity or may determine that the individual is capable of consenting to the collection, use or disclosure of personal health information.

“Restriction on repeated applications

“(5) If a determination that an individual is incapable with respect to consenting to the collection, use or disclosure of personal health information is confirmed on the final disposition of an application under this section, the individual shall not make a new application under this section for a determination with respect to the same or a similar issue within six months after the final disposition of the earlier application, unless the board gives leave in advance.

“Grounds for leave

“(6) The board may give leave for the new application to be made if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the individual’s capacity.

“Procedure

“(7) Sections 73 to 81 of the Health Care Consent Act, 1996 apply with necessary modifications to an application under this section.”

**The Chair:** Any questions or comments? If none, shall the amendment carry? Carried.

Shall section 22 of schedule A, as amended, carry? Carried.

Section 23, page 28.

**Ms Wynne:** I move that paragraph 1 of subsection 23(1) of schedule A to the bill be struck out and the following substituted:

“1. If the individual is capable of consenting to the collection, use or disclosure of the information,

“i. the individual, or

“ii. if the individual is at least 16 years of age, any person who is capable of consenting, whom the individual has authorized in writing to act on his or her behalf and who, if a natural person, is at least 16 years of age.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 23 of schedule A, as amended, carry? Carried.

We move on to section 23.1, page 29.

**Ms Wynne:** I move that schedule A to the bill be amended by adding the following section:

“Factors to consider for consent

“23.1(1) A person who consents under this act or any other act on behalf of or in the place of an individual to a collection, use or disclosure of personal health information by a health information custodian, who withholds or withdraws such a consent or who provides an express instruction under clause 36(1)(a), 37(1)(a) or 48(1)(d) shall take into consideration,

“(a) the wishes, values and beliefs that,

“(i) if the individual is capable, the person knows the individual holds and believes the individual would want reflected in decisions made concerning the individual’s personal health information, or

“(ii) if the individual is incapable or deceased, the person knows the individual held when capable or alive and believes the individual would have wanted reflected in decisions made concerning the individual’s personal health information;

“(b) whether the benefits that the person expects from the collection, use or disclosure of the information outweigh the risk of negative consequences occurring as a result of the collection, use or disclosure;

“(c) whether the purpose for which the collection, use or disclosure is sought can be accomplished without the collection, use or disclosure; and

“(d) whether the collection, use or disclosure is necessary to satisfy any legal obligation.

“Determination of compliance

“(2) If a substitute decision-maker, on behalf of an incapable individual, gives, withholds or withdraws a consent to a collection, use or disclosure of personal health information about the individual by a health information custodian or provides an express instruction under clause 36(1)(a), 37(1)(a) or 48(1)(d) and if the custodian is of the opinion that the substitute decision-maker has not complied with subsection (1), the custodian may apply to the board for a determination as to whether the substitute decision-maker complied with that subsection.

“Parties

“(3) The parties to the application are:

“1. The health information custodian.

“2. The incapable individual.

“3. The substitute decision-maker.

"4. Any other person whom the board specifies.

"Power of Board

"(4) In determining whether the substitute decision-maker complied with subsection (1), the board may substitute its opinion for that of the substitute decision-maker.

"Directions

"(5) If the board determines that the substitute decision-maker did not comply with subsection (1), it may give him or her directions and, in doing so, shall take into consideration the matters set out in clauses (1)(a) to (d).

"Time for compliance

"(6) The board shall specify the time within which the substitute decision-maker must comply with its directions.

"Deemed not authorized

"(7) If the substitute decision-maker does not comply with the board's directions within the time specified by the board, he or she shall be deemed not to meet the requirements of subsection 25(2).

"Public guardian and trustee

"(8) If the substitute decision-maker who is given directions is the public guardian and trustee, he or she is required to comply with the directions and subsection (6) does not apply to him or her.

"Procedure

"(9) Sections 73 to 81 of the Health Care Consent Act, 1996 apply with necessary modifications to an application under this section."

**The Chair:** Questions or comments? If not, shall the amendment carry? Carried.

Shall section 23.1 of schedule A, as amended, carry? Carried.

Section 24, page 30.

1630

**Ms Wynne:** I move that section 24 of schedule A to the bill be struck out and the following substituted:

"Authority of substitute decision-maker

"24.(1) If this act permits or requires an individual to make a request, give an instruction or take a step and a substitute decision-maker is authorized to consent on behalf of the individual to the collection, use or disclosure of personal health information about the individual, the substitute decision-maker may make the request, give the instruction or take the step on behalf of the individual.

"Same

"(2) If a substitute decision-maker makes a request, gives an instruction or takes a step under subsection (1) on behalf of an individual, references in this act to the individual with respect to the request made, the instruction given or the step taken by the substitute decision-maker shall be read as references to the substitute decision-maker, and not of the individual."

**The Chair:** Shall the amendment carry as read? Carried.

Shall section 24 of schedule A, as amended, carry? Carried.

Section 25: Shall section 25 of schedule A carry? Carried.

Page 31, section 26.

**Ms Wynne:** I move that section 26 of schedule A to the bill be struck out and the following substituted:

"Appointment of representative

"26.(1) An individual who is 16 years old or older and who is determined to be incapable of consenting to the collection, use or disclosure of personal health information may apply to the board for appointment of a representative to consent on the individual's behalf to a collection, use or disclosure of the information by a health information custodian.

"Application by proposed representative

"(2) If an individual is incapable of consenting to the collection, use or disclosure of personal health information, another individual who is 16 years old or older may apply to the board to be appointed as a representative to consent on behalf of the incapable individual to a collection, use or disclosure of the information.

"Exception

"(3) Subsections (1) and (2) do not apply if the individual to whom the personal health information relates has a guardian of the person, a guardian of property, an attorney for personal care, or an attorney for property, who has authority to give or refuse consent to the collection, use or disclosure.

"Parties

"(4) The parties to the application are:

"1. The individual to whom the personal health information relates.

"2. The proposed representative named in the application.

"3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 25(1).

"4. All other persons whom the board specifies.

"Appointment

"(5) In an appointment under this section, the board may authorize the representative to consent, on behalf of the individual to whom the personal health information relates, to,

"(a) a particular collection, use or disclosure at a particular time;

"(b) a collection, use or disclosure of the type specified by the board in circumstances specified by the board, if the individual is determined to be incapable of consenting to the collection, use or disclosure of personal health information at the time the consent is sought; or

"(c) any collection, use or disclosure at any time, if the individual is determined to be incapable of consenting to the collection, use or disclosure of personal health information at the time the consent is sought.

"Criteria for appointment

"(6) The board may make an appointment under this section if it is satisfied that the following requirements are met:

"1. The individual to whom the personal health information relates does not object to the appointment.



"2. The representative consents to the appointment, is at least 16 years old and is capable of consenting to the collection, use or disclosure of personal health information.

"3. The appointment is in the best interests of the individual to whom the personal health information relates.

"Powers of board

"(7) Unless the individual to whom the personal health information relates objects, the board may,

"(a) appoint as representative a different individual than the one named in the application;

"(b) limit the duration of the appointment;

"(c) impose any other condition on the appointment;

"(d) on any person's application, remove, vary or suspend a condition imposed on the appointment or impose an additional condition on the appointment.

"Termination

"(8) The board may, on any person's application, terminate an appointment made under this section if,

"(a) the individual to whom the personal health information relates or the representative requests the termination;

"(b) the representative is no longer capable of consenting to the collection, use or disclosure of personal health information;

"(c) the appointment is no longer in the best interests of the individual to whom the personal health information relates; or

"(d) the individual to whom the personal health information relates has a guardian of the person, a guardian of property, an attorney for personal care, or an attorney for property, who has authority to give or refuse consent to the types of collections, uses and disclosures for which the appointment was made and in the circumstances to which the appointment applies.

"Procedure

"(9) Sections 73 to 81 of the Health Care Consent Act, 1996 apply with necessary modifications to an application under this section."

**The Chair:** Questions or comments? If none, shall the amendment carry as read? Carried.

Shall section 26 of schedule A, as amended, carry? Carried.

Shall section 27 of schedule A carry? Carried.

Shall section 28 of schedule A carry? Carried.

Page 32, section 29.

**Ms Wynne:** I move that subsection 29(3) of schedule A to the bill be struck out and the following substituted:

"Exception

"(3) This section does not apply to personal health information that a health information custodian is required by law to collect, use or disclose."

**The Chair:** Shall the amendment carry? Carried.

Shall section 29 of schedule A, as amended, carry? Carried.

Section 30, page 33.

**Ms Wynne:** I believe there's a change and I'm not sure whether I'm reading the November—yes, it's November 1, I believe.

**Clerk of the Committee:** So you're reading new 33?

**Ms Wynne:** Yes.

I move that section 30 of schedule A to the bill be amended by adding the following subsections:

"Express instruction to public hospitals etc.

"(2) An express instruction that an individual, before November 1, 2005, gives to a health information custodian that is a public hospital within the meaning of the Public Hospitals Act or a person described in paragraph 1 of subsection 3(5) with respect to the use or disclosure of personal health information about the individual is not an express instruction for the purpose of clause 36(1)(a), 37(1)(a) or 48(1)(d).

"Same

"(3) Nothing in subsection (2) prevents the custodian from refraining, in accordance with an express instruction that an individual gives as described in that subsection, to use or disclose the information under the clause 36(1)(a), 37(1)(a) or 48(1)(d).

"Repeal

"(4) Subsections (2) and (3) are repealed on November 1, 2005."

**The Chair:** Discussion, questions or comments?

**Mr Ouellette:** We've been scrambling to try and get this all straightened out. I know the ministry staff has been working very hard. I wonder if the ministry staff might be able to explain why the changes on those dates, just from the three pieces now that will be different.

**The Chair:** Can you introduce yourself, please, before we proceed?

**Mr Michael Orr:** My name is Michael Orr, legal services branch, Ministry of Health and Long-Term Care.

This provision relates to the express instructions which are to be given under certain of the subsections. Under sections 36, 37 and 48 there are provisions which allow uses and disclosures of personal health information to be made without the person's consent in certain circumstances, subject to the individual's ability to provide an express instruction to the contrary.

What we heard from the Ontario Hospital Association was that they would not be able to comply in many instances, given the need to adjust their information systems. They would not be able to comply with those provisions for one year after the legislation comes into force. This date is one year after the legislation comes into force if the remaining amendments that the government is proposing, I believe, are accepted.

**Mr Ouellette:** OK. So, from that, we have an understanding that the OHA and the OMA are in agreement with this change. Would the PA agree to that?

**The Chair:** Can you identify yourself first, please?

**Ms Carol Appathurai:** Carol Appathurai. I'm acting director of the health information privacy unit.

**Mr Ouellette:** I was asking the parliamentary assistant whether the OHA and OMA were in agreement with that.

**Mr Delaney:** Yes, they are.

**Ms Shelley Martel (Nickel Belt):** I have two concerns that we had raised with us by the community health centre in Sault Ste Marie. They also expressed serious concerns about how they would provide the technical changes to implement the lockbox provisions. They are an extremely large outfit; it's not a hospital, true. But the number of patients they see in there and the technology, we have a sense from them that they aren't going to be able to comply with this date as well.

**Ms Appathurai:** We have not heard from them subsequent to those discussions.

1640

**Ms Martel:** That's what we heard when we were there for the public hearings.

I just flagged that because they were the other group that had moved, quite substantially, to technological requirements and expressed concerns to us about that.

Secondly, and this may not be an issue at all but just to refresh my memory on this, the federal legislation is in effect. What provisions, if any, were the hospitals obliged to meet with respect to lockbox provisions, and this does impact on them at all? Were there any federal provisions, and I'm sorry I can't remember, that would have had visions similar to what we're moving forward with now, which may be affected because we've got such different dates than the federal law?

**Ms Appathurai:** There was no definitive statement made, but it appeared that the hospitals would not come under the federal legislation. They would not be bound by that.

**Ms Martel:** So whatever changes we make, it's not impacting on them one way or the other. OK.

**The Chair:** Are there any other questions or comments?

Shall the amendment carry, as read? Carried.

Shall section 30 of schedule A, as amended, carry? Carried.

Shall section 31 of schedule A carry? Carried.

Shall section 32 of schedule A carry? Carried.

Section 33, page 34.

**Ms Wynne:** I move that subsection 33(2) of schedule A to the bill be struck out.

**The Chair:** Shall the amendment carry? Carried.

Page 35.

**Ms Wynne:** I move that subsection 33(3) of schedule A to the bill be amended by adding "Despite subsection 47(1)" at the beginning.

**The Chair:** Shall the amendment carry?

**Interjection:** That's the new—

**Ms Wynne:** That's new 35.

**The Chair:** OK. What is the change, to make sure that all the members are aware? I didn't get your name.

**Ms Halyna Perun:** It's Halyna Perun. The difference between the motion in the package and the new motion is that instead of "subject to subsection 47(1)," the provision should read, "Despite subsection 47(1)." That is consistent with the provision and motion at page 38,

which also reads, "Despite subsection 47(1)." It was an oversight.

**The Chair:** Thank you for the clarification.

Shall the amendment carry now? Carried.

Page 36.

**Ms Wynne:** I move that clause 33(3)(c) of schedule A to the bill be amended by striking out "a health profession whose members" and substituting "health care practitioners who".

**The Chair:** Shall the amendment carry? Carried.

Page 37.

**Ms Wynne:** I move that clause 33(3)(d) of schedule A to the bill be struck out and the following substituted:

"(d) if the person is prescribed and is collecting or using the health number, as the case may be, for purposes related to health administration, health planning, health research or epidemiological studies."

**The Chair:** Shall the amendment carry? Carried.

Page 38.

**Ms Wynne:** I move that subsection 33(4) of schedule A to the bill be struck out and the following substituted:

"Disclosure

"(4) Despite subsection 47(1) and subject to the exceptions and additional requirements, if any, that are prescribed, a person who is not a health information custodian shall not disclose a health number except as required by law."

**The Chair:** Shall the amendment carry? Carried.

Page 39.

**Ms Wynne:** I move that section 33 of schedule A to the bill be amended by adding the following subsection:

"Exceptions

"(6) Subsections (2), (3) and (4) do not apply to,

"(a) a person who collects, uses or discloses a health number for the purposes of a proceeding;

"(b) a prescribed entity mentioned in subsection 43.1(1) that collects, uses or discloses the health number in the course of carrying out its functions under section 43.1; or

"(c) a health data institute that the minister approves under subsection 45(9) and that collects, uses or discloses the health number in the course of carrying out its functions under sections 45 and 46."

**The Chair:** Shall the amendment carry? Carried.

Shall section 33 of schedule A, as amended, carry? Carried.

Shall section 34 of schedule A carry? Carried.

Section 35, page 40.

**Ms Wynne:** I move that clause 35(1)(a) of schedule A to the bill be struck out and the following substituted:

"(a) the individual consents to the collection being made indirectly;"

**The Chair:** Shall the amendment carry? Carried.

Page 41.

**Ms Wynne:** I move that clause 35(1)(c) of schedule A to the bill be amended by striking out the portion before subclause (i) and substituting the following:

"(c) the custodian is an institution within the meaning of the Freedom of Information and Protection of Privacy



Act or the Municipal Freedom of Information and Protection of Privacy Act, or is acting as part of such an institution, and the custodian is collecting the information for a purpose related to,”

**The Chair:** Shall the amendment carry? Carried.

Page 42.

**Ms Wynne:** I move that subclause 35(1)(c)(ii) of schedule A to the bill be struck out and the following substituted:

“(ii) the conduct of a proceeding or a possible proceeding, or”

**The Chair:** Shall the amendment carry? Carried.

Page 43.

**Ms Wynne:** I move that subsection 35(1) of schedule A to the bill be amended by adding the following clauses:

“(c.1) the custodian collects the information from a person who is not a health information custodian for the purpose of carrying out research conducted in accordance with subsection 36(3) or research that a research ethics board has approved under section 43 or that meets the criteria set out in clauses 43(10)(a) to (c), except if the person is prohibited by law from disclosing the information to the custodian;

“(c.2) the custodian is a prescribed entity mentioned in subsection 43.1(1) and the custodian is collecting personal health information from a person who is not a health information custodian for the purpose of that subsection;”

**The Chair:** Shall the amendment carry? Carried.

**Mr Ouellette:** Mr Chair, you brought forward the Toronto Police Service’s letter on behalf of Chief Fantino. Would his requests that have been brought forward be addressed in that section or would it be under section 43, under the definition of “custodian”?

**Ms Perun:** The disclosures-without-consent part, which would start around section 37, and most likely around section 39.

**Mr Ouellette:** Were there any amendments coming forward, specifically not having a chance, as the Chair mentioned?

**Ms Perun:** No, there are no amendments with respect to that letter.

**The Chair:** Any other questions or comments?

**Mr Fonseca:** That will be a separate issue and legislation will be coming forward where that issue will be addressed by the Ministry of Health and Long-Term Care and the Ministry of Community Safety and Correctional Services.

**The Chair:** So that could be brought to our attention again when we come to sections 37 and 39.

Shall the amendment on page 43 carry? Carried.

Page 44.

**Ms Wynne:** I move that clauses 35(1)(d), (e) and (f) of schedule A to the bill be struck out and the following substituted:

“(d) the commissioner authorizes that the collection be made in a manner other than directly from the individual;

“(e) the custodian collects the information from a person who is permitted or required by law or by a treaty,

agreement or arrangement made under an act or an act of Canada to disclose it to the custodian; or

“(f) subject to the requirements and restrictions, if any, that are prescribed, the health information custodian is permitted or required by law or by a treaty, agreement or arrangement made under an act or an act of Canada to collect the information indirectly.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 35 of schedule A, as amended, carry? Carried.

Section 36, page 45.

**Ms Wynne:** I move that clause 36(1)(a) of schedule A to the bill be amended by striking out “35(b)” and substituting “35(1)(b).”

**The Chair:** Shall the amendment carry? Carried.

Page 46.

**Ms Wynne:** I move that clause 36 (1)(c) of schedule A to the bill be amended by adding “or any unauthorized receipt of services or benefits” after “fraud”.

**The Chair:** Shall the amendment carry? Carried.

Page 47.

**Ms Wynne:** I move that clause 36(1)(d) of schedule A to the bill be struck out and the following substituted:

“(d) for the purpose of risk management, error management or for the purpose of activities to improve or maintain the quality of care or to improve or maintain the quality of any related programs or services of the custodian;”

**The Chair:** Shall the amendment carry? Carried.

Page 48.

**Ms Wynne:** I move that clause 36(1)(g) of schedule A to the bill be struck out and the following substituted:

“(g) for the purpose of a proceeding or contemplated proceeding in which the custodian or the agent or former agent of the custodian is, or is expected to be, a party or witness, if the information relates to or is a matter in issue in the proceeding or contemplated proceeding;”

1650

**The Chair:** Shall the amendment carry? Carried.

Page 49.

**Ms Wynne:** I move that clause 36(1)(j) of schedule A to the bill be struck out and the following substituted:

“(j) subject to the requirements and restrictions, if any, that are prescribed, if permitted or required by law or by a treaty, agreement or arrangement made under an act or an act of Canada.”

**The Chair:** Shall the amendment carry? Carried.

Page 50.

**Ms Wynne:** I move that subsection 36(2) of schedule A to the bill be amended by adding “on behalf of the custodian” at the end.

**The Chair:** Shall the amendment carry? Carried.

Page 51.

**Ms Wynne:** I move that subsection 36(4) of schedule A to the bill be amended by adding “or that is acting as part of such an institution” after “Municipal Freedom of Information and Protection of Privacy Act”.

**The Chair:** Shall the amendment carry? Carried.

Shall section 36 of schedule A, as amended, carry?  
Carried.

Page 52, section 37.

**Ms Wynne:** I move that clause 37(1)(a) of schedule A to the bill be amended by adding "2.1" after "2".

**The Chair:** Shall the amendment carry? Carried.

Page 53.

**Ms Wynne:** I move that clause 37(1)(c) of schedule A to the bill be struck out and the following substituted:

"(c) for the purpose of contacting a relative, friend or potential substitute decision-maker of the individual, if the individual is injured, incapacitated or ill and unable to give consent personally."

**The Chair:** Shall the amendment carry? Carried.

Page 54.

**Ms Wynne:** I move that subsection 37(3) of schedule A to the bill be struck out and the following substituted:

"Facility that provides health care

"(3) A health information custodian that is a facility that provides health care may disclose to a person the following personal health information relating to an individual who is a patient or a resident in the facility if the custodian offers the individual the option, at the first reasonable opportunity after admission to the facility, to object to such disclosures and if the individual does not do so:

"1. The fact that the individual is a patient or resident in the facility.

"2. The individual's general health status described as critical, poor, fair, stable or satisfactory, or in similar terms.

"3. The location of the individual in the facility."

**The Chair:** Questions or comments?

**Ms Martel:** I noted in the package that it responded to a number of concerns that were raised and that it had the support of the OHA. I'm assuming that some of those organizations also saw the change.

**Ms Appathurai:** Yes, they did.

**The Chair:** Any other questions or comments? If none, shall the amendment carry? Carried.

Page 55.

**Ms Wynne:** I move that subsection 37(4) of schedule A to the bill be amended by striking out "believed" in the portion before clause (a) and substituting "reasonably suspected".

**The Chair:** Shall the amendment carry? Carried.

Page 56.

**Ms Wynne:** I move that clause 37(4)(b) of schedule A to the bill be struck out and the following substituted:

"(b) for the purpose of informing any person whom it is reasonable to inform in the circumstances of,

"(i) the fact that the individual is deceased or reasonably suspected to be deceased, and

"(ii) the circumstances of death, where appropriate; or"

**The Chair:** Shall the amendment carry? Carried.

Shall section 37 of schedule A, as amended, carry?  
Carried.

Now we'll move on to section 38, page 57.

**Ms Wynne:** I'm reading from the new page 57.

I move that section 38 of schedule A to the bill be amended by adding the following subsection:

"Authorization to collect

"(4) A person who is not a health information custodian is authorized to collect the personal health information that a health information custodian may disclose to the person under clause (1)(c)."

**The Chair:** Can you clarify the change in that one?

**Ms Wynne:** I'm going to ask staff to make the clarification.

**Ms Perun:** The change is basically a drafting change. The change is that in the original package, subsection (4) provided that "a person who is not a health information custodian and who receives information is authorized to collect," but in reality it's before the person receives the information that they must be authorized to collect it. The idea is that the custodian may disclose information where the recipient can receive it, so they have to be authorized to collect it before they can receive it. That's the difference. Therefore, the way it was rewritten is that in subsection 38(4), the new provision will just make it clear that they would be authorized to collect it if they were to get it.

**The Chair:** Any questions? If none, shall the amendment carry, as read? Carried.

Shall section 38 of schedule A, as amended, carry?  
Carried.

Shall section 39 of schedule A carry? Carried.

Section 40, page 58.

**Ms Wynne:** I move that clause 40(1)(a) of schedule A to the bill be struck out and the following substituted:

"(a) subject to the requirements and restrictions, if any, that are prescribed, for the purpose of a proceeding or contemplated proceeding in which the custodian or the agent or former agent of the custodian is, or is expected to be, a party or witness, if the information relates to or is a matter in issue in the proceeding or contemplated proceeding;"

**The Chair:** Shall the amendment carry? Carried.

Shall section 40 of schedule A, as amended, carry?  
Carried.

Section 41, page 59.

**Ms Wynne:** I move that section 41 of schedule A to the bill be struck out and the following substituted:

"Disclosure to successor

"41.(1) A health information custodian may disclose personal health information about an individual to a potential successor of the custodian, for the purpose of allowing the potential successor to assess and evaluate the operations of the custodian, if the potential successor first enters into an agreement with the custodian to keep the information confidential and secure and not to retain any of the information longer than is necessary for the purpose of the assessment or evaluation.

"Transfer to successor

"(2) A health information custodian may transfer records of personal health information about an individual to the custodian's successor if the custodian makes



reasonable efforts to give notice to the individual before transferring the records or, if that is not reasonably possible, as soon as possible after transferring the records.

“Transfer to archives

“(3) Subject to the agreement of the person who is to receive the transfer, a health information custodian may transfer records of personal health information about an individual to,

“(a) the Archives of Ontario; or

“(b) in the prescribed circumstances, a prescribed person whose functions include the collection and preservation of records of historical or archival importance, if the disclosure is made for the purpose of that function.”

**The Chair:** Shall the amendment carry, as read? Carried.

Shall section 41 of schedule A, as amended, carry? Carried.

Section 42, page 60.

**Ms Wynne:** I move that clause 42(1)(h) of schedule A to the bill be struck out and the following substituted:

“(h) subject to the requirements and restrictions, if any, that are prescribed, if permitted or required by law or by a treaty, agreement or arrangement made under an act or an act of Canada.”

**The Chair:** Shall the amendment carry? Carried.

Section 42, page 61.

**Ms Wynne:** I move that subsection 42(2) of schedule A to the bill be amended by striking out “an act described in that clause or a regulation made under that act” and substituting “an act, an act of Canada or a regulation made under any of those acts”.

**The Chair:** Shall the amendment carry? Carried.

Shall section 42 of schedule A, as amended, carry? Carried.

Section 43, page 62.

**Ms Wynne:** I move that clause 43(6)(c) of schedule A to the bill be struck out and the following substituted:

“(c) not publish the information in a form that could reasonably enable a person to ascertain the identity of the individual;

“(c.1) despite subsection 47(1), not disclose the information except as required by law and subject to the exceptions and additional requirements, if any, that are prescribed;”

**The Chair:** Shall the amendment carry? Carried.

Page 63.

**Ms Wynne:** I move that subsection 43(7) of schedule A to the bill be amended by adding “or that is acting as part of such an institution” after “Municipal Freedom of Information and Protection of Privacy Act”.

**The Chair:** Shall the amendment carry? Carried.

Page 64.

**Ms Wynne:** I move that subsection 43(8) of schedule A to the bill be amended by adding “or that is acting as part of such an institution” after “Municipal Freedom of Information and Protection of Privacy Act”.

**The Chair:** Shall the amendment carry? Carried.

Page 65.

**Ms Wynne:** I move that subsection 43(10) of schedule A to the bill be struck out and the following substituted:

“Research approved outside Ontario

“(10) Subject to subsection (11), a health information custodian may disclose personal health information to a researcher or may use the information to conduct research if,

“(a) the research involves the use of personal health information originating wholly or in part outside Ontario;

“(b) the research has received the prescribed approval from a body outside Ontario that has the function of approving research; and

“(c) the prescribed requirements are met.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 43 of schedule A, as amended, carry? Carried.

Section 43.1, page 66.

1700

**Ms Wynne:** I move that clause 43.1(2)(b) of schedule A to the bill be struck out and the following substituted:

“(b) prescribed information in circumstances that are prescribed.”

**The Chair:** Shall the amendment carry? Carried.

Page 67.

**Ms Wynne:** I move that subsection 43.1(3) of schedule A to the bill be struck out and the following substituted:

“Approval

“(3) A health information custodian may disclose personal health information to a prescribed entity under subsection (1) if,

“(a) the entity has in place practices and procedures to protect the privacy of the individuals whose personal health information it receives and to maintain the confidentiality of the information; and

“(b) the commissioner has approved the practices and procedures, if the custodian makes the disclosure on or after the first anniversary of the day this section comes into force.”

**The Chair:** Shall the amendment carry as read? Carried.

Page 68.

**Ms Wynne:** I move that subsection 43.1(4) of schedule A to the bill be amended by striking out “two years” and substituting “three years”.

**The Chair:** Questions or comments? Shall the amendment carry? Carried.

Page 69.

**Ms Wynne:** Just note that I’m reading from new page 69.

I move that subsection 43.1(5) of schedule A to the bill be struck out and the following substituted:

“Authorization to collect

“(5) An entity that is not a health information custodian is authorized to collect the personal health information that a health information custodian may disclose to the entity under subsection (1).

“Use and disclosure

“(6) Subject to the exceptions and additional requirements, if any, that are prescribed and despite subsection 47(1), an entity that receives personal health information under subsection (1) shall not use the information except for the purposes for which it received the information and shall not disclose the information except as required by law.”

**The Chair:** I believe we should have questions and comments on that or clarification from the staff.

**Ms Wynne:** Could we get clarification from staff on that?

**Ms Perun:** This new motion reflects the same issue that I raised on motion 57 with respect to new subsection 38(4). It just came up twice. Basically, if you are allowed to disclose it as a custodian, the prescribed entity is then permitted to receive it, but the actual receipt hasn't occurred as yet.

**The Chair:** Any other questions? If not, shall the amendment carry? Carried.

Shall section 43.1 of schedule A, as amended, carry? Carried.

Section 44. Shall section 44 of schedule A carry? Carried.

Section 45, page 70.

**Ms Wynne:** I move that the definition of “de-identify” in subsection 45(1) of schedule A to the bill be amended by striking out “there is a reasonable basis to believe” and substituting “it is reasonably foreseeable in the circumstances”.

**The Chair:** Shall the amendment carry? Carried.

Page 71.

**Ms Wynne:** I move that subsection 45(10) of schedule A to the bill be amended by striking out “two years” and substituting “three years”.

**The Chair:** Shall the amendment carry? Carried.

Page 72.

**Ms Wynne:** I move that subsection 45(14) of schedule A to the bill be struck out and the following substituted:

“Disclosure by the minister

“(14) The minister may disclose to the health data institute that receives personal health information under subsection (2) other personal health information for the purposes of the analysis and linking that the minister requires if the disclosure is included in the minister's proposal, as amended under subsection (8), if applicable.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 45 of schedule A, as amended, carry? Carried.

Section 46. Shall section 46 of schedule A carry? Carried.

Section 47, page 73.

**Ms Wynne:** I move that subsections 47(1) and (2) of schedule A to the bill be struck out and the following substituted:

“Restrictions on recipients

“47(1) Except as permitted or required by law and subject to the exceptions and additional requirements, if any, that are prescribed, a person who is not a health

information custodian and to whom a health information custodian discloses personal health information, shall not use or disclose the information for any purpose other than,

“(a) the purpose for which the custodian was authorized to disclose the information under this act; or

“(b) the purpose of carrying out a statutory or legal duty.

“Extent of use or disclosure

“(2) Subject to the exceptions and additional requirements, if any, that are prescribed, a person who is not a health information custodian, and to whom a health information custodian discloses personal health information, shall not use or disclose more of the information than is reasonably necessary to meet the purpose of the use or disclosure, as the case may be, unless the use or disclosure is required by law.

“Employee or agent information

“(2.1) Except as permitted or required by law and subject to the exceptions and additional requirements, if any, that are prescribed, if a health information custodian discloses information to another health information custodian and the information is identifying information of the type described in subsection 4(4) in the custody or under the control of the receiving custodian, the receiving custodian shall not,

“(a) use or disclose the information for any purpose other than,

“(i) the purpose for which the disclosing custodian was authorized to disclose the information under this act, or

“(ii) the purpose of carrying out a statutory or legal duty; or

“(b) use or disclose more of the information than is reasonably necessary to meet the purpose of the use or disclosure, as the case may be.

“Same

“(2.2) The restrictions set out in clauses (2.1)(a) and (b) apply to a health information custodian that receives the identifying information described in subsection (2.1) even if the custodian receives the information before the day that subsection comes into force.”

**The Chair:** Shall the amendment carry, as read? Carried.

Shall section 47 of schedule A, as amended, carry? Carried.

Section 48, page 74.

**Ms Wynne:** I move that subsection 48(1) of schedule A to the bill be amended by adding the following clause:

“(c.1) the following conditions are met:

“(i) the custodian is a prescribed entity mentioned in subsection 43.1(1) and is prescribed for the purpose of this clause,

“(ii) the disclosure is for the purpose of health planning or health administration,

“(iii) the information relates to health care provided in Ontario to a person who is resident of another province or territory of Canada, and



“(iv) the disclosure is made to the government of that province or territory;”

**The Chair:** Shall the amendment carry? Carried.

Shall section 48 of schedule A, as amended, carry? Carried.

Section 49: Shall section 49 of schedule A carry? Carried.

Section 50, page 75.

**Ms Wynne:** I move that subclause 50(1)(f)(i) of schedule A to the bill be struck out and the following substituted:

“(i) the custodian is an institution within the meaning of the Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Protection of Privacy Act or is acting as part of such an institution, and”.

**The Chair:** Shall the amendment carry? Carried.

Shall section 50 of schedule A, as amended, carry? Carried.

Shall section 51 of schedule A carry? Carried.

Section 52, page 76.

**Ms Wynne:** I move that clause 52(1)(c) of schedule A to the bill be amended by adding “providing a reason for the refusal” after “the custodian is refusing the request, in whole or in part”.

**The Chair:** Shall the amendment carry? Carried.

Page 77.

**Ms Wynne:** I move that subsection 52(2) of schedule A to the bill be amended by striking out “(b) or (c)” and substituting “(b), (c) or (d)”.

**The Chair:** Shall the amendment carry? Carried.

Page 78.

**Ms Wynne:** I move that clause 52(3)(b) of schedule A to the bill be struck out and the following substituted:

“(b) the time required to undertake the consultations necessary to reply to the request within 30 days after receiving it would make it not reasonably practical to reply within that time.”

**The Chair:** Shall the amendment carry? Carried.

Page 79.

**Ms Wynne:** I move that subsection 52(4.1) of schedule A to the bill be struck out and the following substituted:

“Expedited access

“(4.1) Despite subsection (2), the health information custodian shall give the response required by clause (1)(a), (b), (c) or (d) within the time period that the individual specifies if,

“(a) the individual provides the custodian with evidence satisfactory to the custodian, acting on a reasonable basis, that the individual requires access to the requested record of personal health information on an urgent basis within that time period; and

“(b) the custodian is reasonably able to give the required response within that time period.”

**The Chair:** Shall the amendment carry? Carried.

Page 80.

**Ms Wynne:** Do we need to pass section 52?

**The Chair:** No, page 80 is still—no, sorry.

**Ms Wynne:** Page 80 is 53.

**The Chair:** Thank you.

Shall section 52 of schedule A, as amended, carry? Carried.

The next one is section 53, page 80.

**Ms Wynne:** I move that clauses 53(10)(a), (a.1) and (b) of schedule A to the bill be struck out and the following substituted:

“(a) make the requested correction by,

“(i) recording the correct information in the record and,

“(A) striking out the incorrect information in a manner that does not obliterate the record, or

“(B) if that is not possible, labelling the information as incorrect, severing the incorrect information from the record, storing it separately from the record and maintaining a link in the record that enables a person to trace the incorrect information, or

“(ii) if it is not possible to record the correct information in the record, ensuring that there is a practical system in place to inform a person who accesses the record that the information in the record is incorrect and to direct the person to the correct information;

“(b) give notice to the individual of what it has done under clause (a);”

1710

**The Chair:** Shall the amendment carry? Carried.

Shall section 53 of schedule A, as amended, carry? Carried.

Shall section 54 of schedule A carry? Carried.

Section 55, page 81.

**Ms Wynne:** I move that subsection 55(1) of schedule A to the bill be amended by striking out the portion before clause (a) and substituting the following:

“Response of commissioner

“55.(1) Upon receiving a complaint made under this act, the commissioner may inform the person about whom the complaint is made of the nature of the complaint and,”

**The Chair:** Shall the amendment carry? Carried.

Page 82.

**Ms Wynne:** I move that clause 55(2)(c) of schedule A to the bill be amended by striking out “58 or 59” and substituting “57”.

**The Chair:** Shall the amendment carry? Carried.

Page 83.

**Ms Wynne:** I move that subsections 55(7) and (8) of schedule A to the bill be struck out.

**The Chair:** Shall the amendment carry? Carried.

Shall section 55 of schedule A, as amended, carry? Carried.

Section 56, page 84.

**Ms Wynne:** I move that subsections 56(3) and (4) of schedule A to the bill be struck out.

**The Chair:** Shall the amendment carry? Carried.

Shall section 56 of schedule A, as amended, carry? Carried.

Section 56.1, page 85.

**Ms Wynne:** I move that schedule A to the bill be amended by adding the following section:

“Conduct of commissioner’s review

“56.1(1) In conducting a review under section 55 or 56, the commissioner may make the rules of procedure that the commissioner considers necessary and the Statutory Powers Procedure Act does not apply to the review.

“Evidence

“(2) In conducting a review under section 55 or 56, the commissioner may receive and accept any evidence and other information that the commissioner sees fit, whether on oath or by affidavit or otherwise and whether or not it is or would be admissible in a court of law.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 56.1 of schedule A, as amended, carry? Carried.

Section 57, page 86.

**Ms Wynne:** I move that subsections 57(17), (18), (19) and (20) of schedule A to the bill be struck out and the following substituted:

“Protection under federal act

“(17) The commissioner shall inform a person giving a statement or answer in the course of a review by the commissioner of the person’s right to object to answer any question under section 5 of the Canada Evidence Act.

“Representations

“(18) The commissioner shall give the person who made the complaint, the person about whom the complaint is made and any other affected person an opportunity to make representations to the commissioner.

“Representative

“(19) A person who is given an opportunity to make representations to the commissioner may be represented by counsel or another person.

“Access to representations

“(20) The commissioner may permit a person to be present during the representations that another person makes to the commissioner or to have access to them unless doing so would reveal,

“(a) the substance of a record of personal health information, for which a health information custodian claims to be entitled to refuse a request for access made under section 51; or

“(b) personal health information to which an individual is not entitled to request access under section 51.”

**The Chair:** Shall the amendment carry, as read? Carried.

Shall section 57 of schedule A, as amended, carry? Carried.

Section 60, page 87.

**Ms Wynne:** I move that clause 60(1)(e) of schedule A to the bill be amended by adding “but only if the disposal of the records is not reasonably expected to adversely affect the provision of health care to an individual” at the end.

**The Chair:** Shall the amendment carry? Carried.

Shall section 60 of schedule A, as amended, carry? Carried.

Section 60.1, page 88.

**Ms Wynne:** I move that subsection 60.1(1) of schedule A to the bill be amended by adding “any of” after “made under”.

**The Chair:** Shall the amendment carry? Carried.

Shall section 60.1 of schedule A, as amended, carry? Carried.

Shall section 61 of schedule A carry? Carried.

Section 62, page 89.

**Ms Wynne:** I move that clause 62(3)(b) of schedule A to the bill be amended by adding “any of” after “made under”.

**The Chair:** Shall the amendment carry? Carried.

Page 90.

**Ms Wynne:** I move that subsection 62(4) of schedule A to the bill be struck out and the following substituted:

“Appeal

“(4) A person affected by an order that the commissioner rescinds, varies or makes under any of clauses 60(1)(c) to (h) may appeal the order to the Divisional Court on a question of law in accordance with the rules of court by filing a notice of appeal within 30 days after receiving the copy of the order and subsections 60.1(2) to (5) apply to the appeal.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 62 of schedule A, as amended, carry? Carried.

Shall sections 63 through 68, inclusive, of schedule A carry? Carried.

Section 69, page 91.

**Ms Wynne:** I move that subsection 69(3) of schedule A to the bill be struck out and the following substituted:

“Substitute decision-maker

“(3) A person who, on behalf of or in the place of an individual, gives or refuses consent to a collection, use or disclosure of personal health information about the individual, makes a request, gives an instruction or takes a step is not liable for damages for doing so if the person acts reasonably in the circumstances, in good faith and in accordance with this act and its regulations.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 69 of schedule A, as amended, carry? Carried.

Section 70, page 92.

**Ms Wynne:** I move that clause 70(1)(a) of schedule A to the bill be struck out and the following substituted:

“(a) wilfully collects, uses or discloses personal health information in contravention of this act or its regulations;

“(b) makes a request under this act, under false pretences, for access to or correction of a record of personal health information;”

**The Chair:** Shall the amendment carry? Carried.

Page 93.

**Ms Wynne:** I move that clause 70(1)(d) of schedule A to the bill be struck out and the following substituted:

“(d) disposes of a record of personal health information in the custody or under the control of the cus-



todian with an intent to evade a request for access to the record that the custodian has received under subsection 51(1):”

**The Chair:** Shall the amendment carry? Carried.

Page 94.

**Ms Wynne:** I move that clauses 70(1)(f), (g), (h) and (i) of schedule A to the bill be struck out and the following substituted:

“(f) contravenes subsection 33(3), (4) or (5) or clause 45(15)(a), (e) or (f);

“(g) wilfully obstructs the commissioner or a person known to be acting under the authority of the commissioner in the performance of his or her functions under this act;

“(h) wilfully makes a false statement to mislead or attempt to mislead the commissioner or a person known to be acting under the authority of the commissioner in the performance of his or her functions under this act;

“(i) wilfully fails to comply with an order made by the commissioner or a person known to be acting under the authority of the commissioner under this act; or”

**The Chair:** Shall the amendment carry? Carried.

Page 95.

**Ms Wynne:** I move that subsection 70(3) of schedule A to the bill be struck out and the following substituted:

“Officers, etc

“(3) If a corporation commits an offence under this act, every officer, member, employee or other agent of the corporation who authorized the offence, or who had the authority to prevent the offence from being committed but knowingly refrained from doing so, is a party to and guilty of the offence and is liable, on conviction, to the penalty for the offence, whether or not the corporation has been prosecuted or convicted.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 70 of schedule A, as amended, carry? Carried.

Page 96.

**Ms Wynne:** I move that clause 71(1)(k) of schedule A to the bill be struck out.

**The Chair:** Shall the amendment carry? Carried.

Page 98.

**Ms Wynne:** I move that subsection 71(1) of schedule A to the bill be amended by adding the following clause:

“(1.1) specifying requirements that an express instruction mentioned in clause 36(1)(a), 37(1)(a) or 48(1)(d) must meet;”

**The Chair:** Shall the amendment carry? Carried.

Page 98.

1720

**Ms Wynne:** I move that clause 71(1)(m) of schedule A to the bill be struck out and the following substituted:

“(m) permitting notices, statements or any other things, that under this act are required to be provided in writing, to be provided in electronic or other form instead, subject to the conditions or restrictions that are specified by the regulations made under this act;”

**The Chair:** Shall the amendment carry? Carried.

**Ms Wynne:** I move that subsection 71(1) of schedule A to the bill be amended by adding the following clause:

“(m.2) specifying information relating to the administration or enforcement of this act that is required to be contained in a report made under subsection 58(1) of the Freedom of Information and Protection of Privacy Act;”

**The Chair:** Shall the amendment carry? Carried.

**Ms Wynne:** I move that subsection 71(4) of schedule A to the bill be struck out.

**The Chair:** Shall the amendment carry? Carried.

Shall section 71 of schedule A, as amended, carry? Carried.

**Ms Wynne:** I move that subsection 72(11) of schedule A to the bill be struck out and the following substituted:

“No review

“(11) Subject to subsection (12), neither a court, nor the commissioner shall review any action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the minister under this section.

“Exception

“(12) Any person resident in Ontario may make an application for judicial review under the Judicial Review Procedure Act on the grounds that the minister has not taken a step required by this section.

“Time for application

“(13) No person shall make an application under subsection (12) with respect to a regulation later than 21 days after the day on which,

“(a) the minister publishes a notice with respect to the regulation under clause (1)(a) or subsection (9), where applicable; or

“(b) the regulation is filed, if it is a regulation described in subsection (10).”

**The Chair:** Shall the amendment carry? Carried.

Shall section 72 of schedule A, as amended, carry? Carried.

Shall section 73 of schedule A carry? Carried.

**Ms Wynne:** I move that paragraphs 3 to 7 of subsection 19(2) of the Ambulance Act, as set out in subsection 74(3) of schedule A to the bill, be struck out and the following substituted:

“3. The minister and one of an upper-tier municipality and a delivery agent.

“4. An operator and one of an upper-tier municipality, a local municipality and a delivery agent.

“5. An operator and a medical director.

“6. A medical director and one of an upper-tier municipality and a delivery agent.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 74 of schedule A, as amended, carry? Carried.

Shall section 75 of schedule A carry? Carried.

Shall section 76 of schedule A carry? Carried.

**Ms Wynne:** I note that I'm reading from the new 103.

I move that subsections 77(3) and (4) of schedule A to the bill be amended by striking out “July 1, 2004” wherever that expression appears and substituting in each case “November 1, 2004”.

I need staff to explain this change.

**The Chair:** Is it November 1, 2004?

**Ms Perun:** That's right.

**The Chair:** Which one is the right one?

**Ms Perun:** The original motion that is in your package—the proclamation date was to be January 1, 2005. This was simply an oversight, because the Bill 8 amendments still carried the old date. That was simply an oversight from clause-by-clause at first reading. The new motion was to correct that, but the new motion that we have filed reflects a new proclamation date of November 1, 2004, moved a month back from October 1, 2004.

**Mr Ouellette:** OK. This is a new new one.

**Ms Perun:** It's a new new one. This reflects a discussion that Michael raised. So the date, everywhere it comes up October 1, will now be November 1.

**The Chair:** Any other questions? If none, shall the amendment carry, as read? Carried.

Shall section 77 of schedule A, as amended, carry? Carried.

Shall section 78 of schedule A carry? Carried.

**Ms Wynne:** I move that section 79 of schedule A to the bill be amended by adding the following subsection:

“(3.1) Subsection 65(1) of the act is amended by adding ‘or a health information custodian as defined in the Personal Health Information Protection Act, 2004’ at the end.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 79 of schedule A, as amended, carry? Carried.

Shall section 80 of schedule A carry? Carried.

Section 81, page 105.

**Ms Wynne:** I move that subsection 81(1) of schedule A to the bill be amended by striking out “July 1, 2004” in the portion before clause (a) and substituting “November 1, 2004.”

**The Chair:** That is a change again.

**Ms Wynne:** That was reading from the new new page 105, the brand-new page 105.

**The Chair:** Shall the amendment carry, as read? Carried.

Shall section 81 of schedule A, as amended, carry? Carried.

Section 82, page 106.

**Ms Wynne:** I move that subsection 82(3.1) of schedule A to the bill be struck out and the following substituted:

“(3.1) Subsection 20(8) of the act is repealed and the following substituted:

“Not spouse

“(8) Two persons are not spouses for the purpose of this section if they are living separate and apart as a result of a breakdown of their relationship.”

**The Chair:** Shall the amendment carry? Carried.

Shall section 82 of schedule A, as amended, carry? Carried.

Shall sections 83, 84, 85 and 86 carry? Carried.

Section 87, page 107.

**Ms Wynne:** I move that subsection 87(20) of schedule A to the bill be struck out and the following substituted:

“(20) Paragraph 42 of subsection 68(1) of the act is repealed and the following substituted:

“42. Relating to the security, retention or disposal of a record of personal health information within the meaning of the Personal Health Information Protection Act, 2004, but only to the extent that a regulation made under this paragraph is consistent with that act and the regulations made under it;”

**The Chair:** Shall the amendment carry? Carried.

Shall section 87 of schedule A, as amended, carry? Carried.

Section 88, page 108.

**Ms Wynne:** I move that paragraph 5 of subsection 88(5) of schedule A to the bill be struck out.

**The Chair:** Shall the amendment carry? Carried.

Page 109.

**Ms Wynne:** I need a clarification here. Is that part “twenty point one” or are those Xs holding a place?

**Ms Perun:** It's part XX.1.

**Ms Wynne:** I move that clause 35(2)(b) of the Mental Health Act, as set out in subsection 88(5) of schedule A to the bill, be struck out and the following substituted:

“(b) complying with part XX.1 (Mental Disorder) of the Criminal Code (Canada) or an order or disposition made pursuant to that part.”

**The Chair:** Shall the amendment carry? Carried.

Page 110.

**Ms Wynne:** I move that subsection 35(4) of the Mental Health Act, as set out in subsection 88(5) of schedule A to the bill, be amended by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding the following clause:

“(d) a prescribed person who is providing advocacy services to patients in the prescribed circumstances.”

**The Chair:** Shall the amendment carry? Carried.

Page 111.

**Ms Wynne:** I move that subsection 88(15.1) of schedule A to the bill be struck out.

**The Chair:** Shall the amendment carry? Carried.

Page 112.

**Ms Wynne:** I move that section 88 of schedule A to the bill be amended by adding the following subsection—sorry.

**Clerk of the Committee:** There's a new 111(a).

**Ms Wynne:** OK, I'm reading from 111(a). I apologize.

**The Chair:** OK, sorry. I've got two books.

**Ms Wynne:** So, does everybody have the new 111(a)? That's what it says on mine.

**The Chair:** Yes, 111(a), subsection 88(16), clause 81(h.2).

**Ms Wynne:** Yes. I move that section 88 of schedule A to the bill be amended by adding the following subsection:

“(16) Section 81 of the act, as amended by the Statutes of Ontario, 1996, chapter 2, section 72, 1997, chapter 15,



section 11 and 2000, chapter 9, section 30, is amended by adding the following clauses:

1730

“(h.2) requiring that a physician who determines that a patient is incapable of consenting to the collection, use or disclosure of personal health information promptly,

“(i) give the patient a written notice that sets out the advice that the regulation specifies with respect to the patient’s rights, and

“(ii) notify a rights adviser;

“(h.3) requiring the rights adviser mentioned in clause (h.2) to give the patient the explanations that the regulation specifies and governing the content of the explanations;”

**The Chair:** Shall the amendment carry? Carried.

Now I’ve got 112 here.

**Mr John Yakabuski (Renfrew-Nipissing-Pembroke):**

Mr Chair, I have a question. Page 111 is gone, then?

**The Chair:** We did carry that.

**Mr Yakabuski:** OK, I’m sorry. It was so quick.

**Mr Parsons:** We voted for it.

**Ms Wynne:** But we’re still on section 88, right?

**The Chair:** Yes.

**Ms Wynne:** On page 112?

**The Chair:** Page 112.

**Ms Wynne:** I move that section 88 of schedule A to the bill be amended by adding the following subsection:

“(21) Subsection 81(1) of the act, as amended by the Statutes of Ontario, 1996, chapter 2, section 72, 1997, chapter 15, section 11 and 2000, chapter 9, section 30, is amended by adding the following clause:

“(k.4) prescribing a person and circumstances for the purpose of clause 35(4) (d);”

**The Chair:** Shall the amendment carry? Carried.

Shall section 88, schedule A, as amended, carry? Carried.

Next is sections 88.1 to 94. Shall those sections of schedule A carry? Carried.

Section 95: We have one, 112(A).

**Ms Wynne:** Yes. Note that I’m reading from new 112(A).

I move that section 95 of schedule A to the bill be struck out and the following substituted:

“Commencement

“95.(1) Subject to subsection (2), this schedule comes into force on the day the Health Information Protection Act, 2004 receives royal assent.

“Same

“(2) Sections 1 to 70 and 73 to 94 come into force on October 1, 2004.”

**The Chair:** Shall the amendment carry as read? Carried.

Shall section 95 of schedule A, as amended, carry? Carried.

Shall section 96 of schedule A carry? Carried.

Shall schedule A, as amended, carry? Carried.

Schedule B, section 1, page 113.

**Ms Wynne:** I move that clause (e) of the definition of “health care” in section 1 of schedule B to the bill be struck out and the following substituted:

“(e) a prescribed type of service;”

**The Chair:** Shall the amendment carry? Carried.

Page 114.

**Ms Wynne:** I move that subclause (a)(iii) of the definition of “quality of care committee” in section 1 of schedule B to the bill be struck out and the following substituted:

“(iii) by an entity that is prescribed by the regulations and that carries on activities for the purpose of improving or maintaining the quality of care provided by a health facility, a health care provider or a class of health facility or health care provider;”

**The Chair:** Shall the amendment carry? Carried.

Page 115.

**Ms Wynne:** I move that clause (b) of the definition of “quality of care committee” in section 1 of schedule B to the bill be struck out and the following substituted:

“(b) that meets the prescribed criteria, if any, and”

**The Chair:** Shall the amendment carry? Carried.

Page 116.

**Ms Wynne:** I move that clause (c) of the definition of “quality of care committee” in section 1 of schedule B to the bill be struck out and the following substituted:

“(c) whose functions are to carry on activities for the purpose of studying, assessing or evaluating the provision of health care with a view to improving or maintaining the quality of the health care or the level of skill, knowledge and competence of the persons who provide the health care;”

**The Chair:** Shall the amendment carry? Carried.

Page 117.

**Ms Wynne:** I move that the definition of “quality of care information” in section 1 of schedule B to the bill be amended by adding “or” at the end of clause (a), by striking out “or” at the end of clause (b) and by striking out clause (c).

**The Chair:** Shall the amendment carry? Carried.

Page 118.

**Ms Wynne:** I move that clauses (d), (f) and (g) of the definition of “quality of care information” in section 1 in schedule B to the bill be struck out and the following substituted:

“(d) information contained in a record that is maintained for the purpose of providing health care to an individual,

“(f) facts contained in a record of an incident involving the provision of health care to an individual except if the facts involving the incident are also fully recorded in a record mentioned in clause (d) relating to the individual; or

“(g) information that a regulation specifies is not quality of care information and that a quality of care committee receives after the day on which that regulation is made;”

**The Chair:** Shall the amendment carry? Carried.

Page 119.

**Ms Wynne:** I move that clause (c) of the definition of "witness" in section 1 of schedule B to the bill be amended by adding "or cross-examined" after "examined".

**The Chair:** Shall the amendment carry? Carried.

Shall section 1 of schedule B, as amended, carry? Carried.

Shall section 2 of schedule B carry? Carried.

Shall section 3 of schedule B carry? Carried.

Section 4. Page 120.

**Ms Wynne:** I move that subsection 4(3) of schedule B to the bill be struck out and the following substituted:

"Exception, quality of care committee

"(3) Despite subsection (1) and the Personal Health Information Protection Act, 2004, a quality of care committee may disclose quality of care information to,

"(a) the management of the health facility or entity mentioned in subclause (a)(ii) of the definition of 'quality of care committee' in section 1 that established, appointed or approved the committee if the committee considers it appropriate to do so for the purpose of improving or maintaining the quality of health care provided in or by the facility or entity; or

"(b) the management of a health facility or health care provider, where an entity mentioned in subclause (a)(iii) of the definition of 'quality of care committee' in section 1 carries on activities for the purpose of improving or maintaining the quality of health care provided by the facility, the provider or a class including the facility or the provider, if the committee considers it appropriate to do so for the purpose of improving or maintaining the quality of health care provided in or by the facility, provider or class."

**The Chair:** Shall the amendment carry? Carried.

Page 121.

**Ms Wynne:** I move that subsection 4(6) of schedule B to the bill be amended by adding "or maintaining" after "improving".

**The Chair:** Shall the amendment carry? Carried.

Shall section 4 of schedule B, as amended, carry? Carried.

Shall section 5 of schedule B carry? Carried.

Shall section 6 of schedule B carry? Carried.

Section 7, page 122.

**Ms Wynne:** I move that subsection 7(3) of schedule B to the bill be struck out and the following substituted:

"Officers, etc

"(3) If a corporation commits an offence under this act, every officer, member, employee or other agent of the corporation who authorized the offence, or who had the authority to prevent the offence from being committed but knowingly refrained from doing so, is a party to and guilty of the offence and is liable, on conviction, to the penalty for the offence, whether or not the corporation has been prosecuted or convicted."

**The Chair:** Shall the amendment carry? Carried.

Shall section 7 of schedule B, as amended, carry? Carried.

Section 8, page 123.

**Ms Wynne:** I move that subsection 8(1) of schedule B to the bill be amended by striking out "for damages".

**The Chair:** Shall the amendment carry? Carried.

Page 124.

**Ms Wynne:** I move that subsection 8(2) of schedule B to the bill be amended by striking out the portion before clause (a) and substituting the following:

"Same, committee member

"(2) No action or other proceeding, including a prosecution for an offence under section 7, may be instituted in respect of,"

**The Chair:** Shall the amendment carry? Carried.

Shall section 8 of schedule B, as amended, carry? Carried.

Section 9, page 125.

**Ms Wynne:** I move that clause 9(1)(b) of schedule B to the bill be struck out.

**The Chair:** Shall the amendment carry? Carried.

Page 126.

**Ms Wynne:** I move that clauses 9(1)(c) and (c.1) of schedule B to the bill be struck out and the following substituted:

"(c) specifying information for the purpose of clause (g) of the definition of 'quality of care information' in section 1;"

**The Chair:** Shall the amendment carry? Carried.

Page 127.

**Ms Wynne:** I move that subsection 9(2) of schedule B to the bill be struck out and the following substituted:

"Minister's regulations

"(2) The minister may make regulations prescribing anything that the definition of 'health care' or 'quality of care committee' in section 1 mentions as being prescribed."

**The Chair:** Shall the amendment carry? Carried.

Shall section 9 of schedule B, as amended, carry? Carried.

Section 10, page 128.

1740

**Ms Wynne:** I move that subsection 10(11) of schedule B to the bill be struck out and the following substituted:

"No review

"(11) Subject to subsection (12), a court shall not review any action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the minister under this section.

"Exception

"(12) Any person resident in Ontario may make an application for judicial review under the Judicial Review Procedure Act on the grounds that the minister has not taken a step required by this section.

"Time for application

"(13) No person shall make an application under subsection (12) with respect to a regulation later than 21 days after the day on which,

"(a) the minister publishes a notice with respect to the regulation under clause (1)(a) or subsection (9), where applicable; or



“(b) the regulation is filed, if it is a regulation described in subsection (10).”

**The Chair:** Shall the amendment carry? Carried.

Shall section 10 of schedule B, as amended, carry? Carried.

**Ms Wynne:** I move that the definition of “quality assurance information” in subsection 83.1(1) of schedule 2 to the Regulated Health Professions Act, 1991, as set out in subsection 10.1(2) of schedule B to the bill, be amended by adding “or” at the end of clause (c), by striking out—I’m sorry. I’m just not clear whether this is a typo or whether I’m just losing my mind. Sorry.

**Mr Yakabuski:** I move that it’s a typo.

**The Chair:** It’s a typo.

**Ms Wynne:** OK. Can we then change the typo?

**The Chair:** Remove that.

**Ms Wynne:** OK. I’m going to read a new version then of page 129.

I move that the definition of “quality assurance information” in subsection 83.1(1) of schedule 2 to the Regulated Health Professions Act, 1991, as set out in subsection 10.1(2) of schedule B to the bill, be amended by adding “or” at the end of clause (c), by striking out “or” at the end of clause (d) and by striking out clause (e).

**The Chair:** Shall the amendment carry, as read? Carried.

**Ms Wynne:** I move that clause (h) of the definition of “quality assurance information” in subsection 83.1 (1) of schedule 2 to the Regulated Health Professions Act, 1991, as set out in subsection 10.1(2) of schedule B to the bill, be struck out and the following substituted:

“(h) information that a regulation made under this code specifies is not quality assurance information and that the Quality Assurance Committee receives after the day on which that regulation is made;”

**The Chair:** Shall the amendment carry? Carried.

**Ms Wynne:** I move that clause (a) of the definition of “witness” in subsection 83.1(1) of schedule 2 to the Regulated Health Professions Act, 1991, as set out in subsection 10.1(2) of schedule B to the bill, be amended by adding “or cross-examined” after “examined”.

**The Chair:** Shall the amendment carry? Carried.

**Ms Wynne:** I move that subsection 83.1(7) of schedule 2 to the Regulated Health Professions Act, 1991, as set out in subsection 10.1(2) of schedule B to the bill, be struck out and the following substituted:

“Non-retaliation

“(7) No one shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage a person by reason that the person has disclosed information to the Quality

Assurance Committee under subsection (3), but a person may be disciplined for disclosing false information to the committee.”

**The Chair:** Shall the amendment carry? Carried.

**Ms Wynne:** I move that subsection 10.1(3) of schedule B to the bill be struck out and the following substituted:

“(3) Subsection 95(1) of schedule 2 to the act, as re-enacted by the statutes of Ontario, 1998, chapter 18, schedule G, section 23, is amended by adding the following clause:

“(r.1) specifying information for the purposes of clause (h) of the definition of ‘quality assurance information’ in subsection 83.1(1);”

**The Chair:** Shall the amendment carry, as read? Carried.

Shall section 10.1 of schedule A, as amended, carry? Carried.

**Ms Wynne:** I’ll note that I’m reading from the new new 134.

I move that section 11 of schedule B to the bill be struck out and the following substituted:

“Commencement

11(1) Subject to subsection (2), this schedule comes into force on the day the Health Information Protection Act, 2004 receives royal assent.

“Same

“(2) Sections 1 to 8 and subsections 10.1(1) and (2) come into force on November 1, 2004.”

**The Chair:** Shall the amendment carry, as read? Carried.

Shall section 11 of schedule B, as amended, carry? Carried.

Section 12: Shall section 12 of schedule B carry? Carried.

Shall section B, as amended, carry? Carried.

Shall sections 1 through 4 of Bill 31 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 31, as amended, carry? Carried.

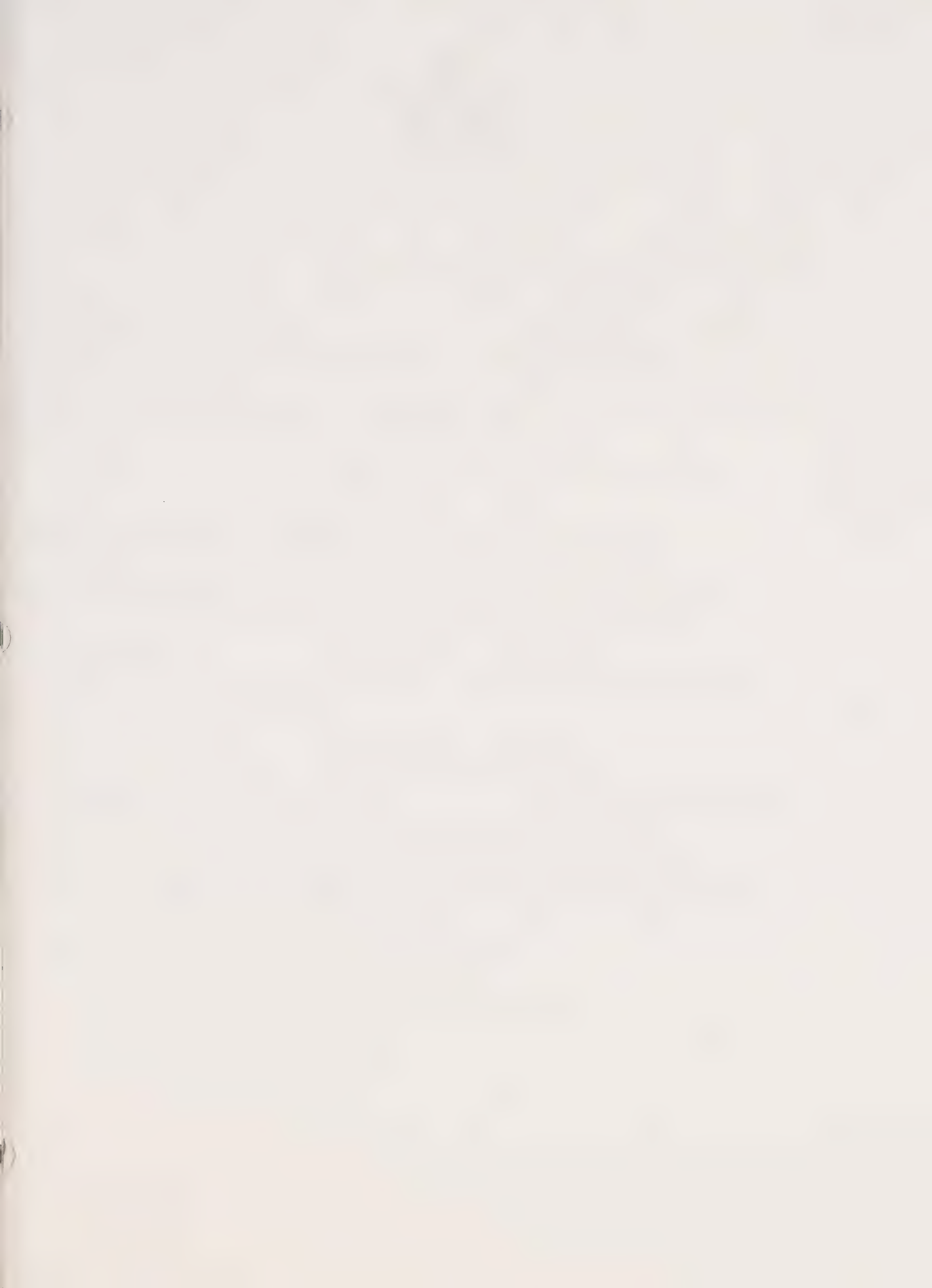
Shall I report the bill, as amended, to the House? Agreed.

That’s it.

**Mr Yakabuski:** I’d like to commend Ms Wynne for getting us through these in this time. There are some things that I can do speedily but reading isn’t one of them.

**The Chair:** I thank her very much and thank you very much for your co-operation. Thanks to the staff also for the good work they have done. Enjoy the rest of the day and enjoy the game tonight.

*The committee adjourned at 1746.*





## CONTENTS

Wednesday 28 April 2004

Committee business .....	G-249
Subcommittee report .....	G-249
Health Information Protection Act, 2004, Bill 31, <i>Mr Smitherman /</i> <i>Loi de 2004 sur la protection des renseignements sur la santé,</i> <i>projet de loi 31, M. Smitherman.....</i>	G-249

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G-11

G-11

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## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 12 May 2004

# Journal des débats (Hansard)

Mercredi 12 mai 2004

Standing committee on  
general government

Greenbelt Protection Act, 2004

Comité permanent des  
affaires gouvernementales

Loi de 2004 sur la protection  
de la ceinture de verdure



Chair: Jean-Marc Lalonde  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 12 May 2004

Mercredi 12 mai 2004

*The committee met at 1607 in room 151.*

## SUBCOMMITTEE REPORT

**The Chair (Mr Jean-Marc Lalonde):** I will call this meeting to order. First of all, I'd like to thank the minister for taking the time from his busy schedule to come and give us some additional information, and also the technical staff.

I would ask first that Mr Delaney give us the subcommittee report.

**Mr Bob Delaney (Mississauga West):** Thank you, Mr Chair. This is the report of the subcommittee.

Your subcommittee met on Monday, May 10, 2004, to consider the method of proceeding on Bill 27, An Act to establish a greenbelt study area and to amend the Oak Ridges Moraine Conservation Act, 2001, and recommends the following:

1. That the committee meet for the purpose of public hearings on Bill 27 on May 14, 2004, in the Niagara region, on May 17, 2004, at Queen's Park, May 21, 2004, in Newmarket and, if necessary, May 31, 2004, at Queen's Park.

2. That the committee meet from 1 pm to 5 pm in the Niagara region, 3:30 pm to 6 pm in Toronto and 10 am to 4 pm in Newmarket. Times and locations are subject to change and based on witness response and travel logistics.

3. That the committee invite the Minister of Municipal Affairs and Housing to make a 15-minute presentation before the committee on May 12, 2004, and that ministry staff provide the committee with a 30-minute technical briefing, followed by a 30-minute question and answer period from members of the committee.

4. That the committee meet for the purpose of clause-by-clause consideration of Bill 27, June 2 and June 7, 2004, in Toronto.

5. That amendments to Bill 27 be received by the clerk of the committee by 5 pm on May 31, 2004.

6. That an advertisement be placed on the OntParl channel, the Legislative Assembly Web site and via the Canada NewsWire service.

7. That the clerk provides each caucus with the list of those who have responded to the advertisement on a daily basis.

8. That the deadline for those who wish to make an oral presentation on Bill 27 on May 14 in the Niagara

region and May 17 at Queen's Park be 5 pm on May 12, 2004. That the deadline for those who wish to make an oral presentation on Bill 27 on May 21 in Newmarket and May 31 at Queen's Park be 5 pm on May 19, 2004.

9. That the clerk be authorized to schedule groups and individuals in consultation with the Chair, and if there are more witnesses wishing to appear than time available, the clerk will consult with the Chair, who will make the decisions regarding scheduling.

10. That the deadline for written submissions on Bill 27 be 5 pm on May 31, 2004.

11. That individuals be offered 15 minutes in which to make their presentations and organizations be offered 20 minutes in which to make their presentations.

12. That the clerk of the committee, in consultation with the Chair, be authorized prior to the passage of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

This is the report of the subcommittee.

**The Chair:** Any questions on the subcommittee report? If not, all in favour? Carried.

## GREENBELT PROTECTION ACT, 2004

LOI DE 2004 SUR LA PROTECTION  
DE LA CEINTURE DE VERDURE

Consideration of Bill 27, An Act to establish a greenbelt study area and to amend the Oak Ridges Moraine Conservation Act, 2001 / Projet de loi 27, Loi établissant une zone d'étude de la ceinture de verdure et modifiant la Loi de 2001 sur la conservation de la moraine d'Oak Ridges.

## STATEMENT BY THE MINISTER

**The Chair:** Our next item is the Minister of Municipal Affairs, the Honourable John Gerretsen.

**Hon John Gerretsen (Minister of Municipal Affairs and Housing, minister responsible for seniors):** Thank you very much, Mr Chair. I'm very pleased, particularly in the nine years I've been here, to present a bill like this for the first time. I must congratulate you on the beautiful décor you have here now. There must have been some money left in the Clerk's budget to provide for this new setting, and I'm very pleased to see that. And it's nice to see that you have such a talented clerk and legislative



researcher here. I worked with both of them in the past, and you are very blessed in this committee to have such wonderful and talented people working with you.

**The Chair:** She's the best.

**Hon Mr Gerretsen:** I will now continue with my presentation. I have with me Barbara Konyi, who is the manager of the planning policy branch for the Ministry of Municipal Affairs and Housing, and she will give the technical briefing later on, as well as Irvin Shachter, who is the legal counsel, in case there are any questions relating to some of the legal issues surrounding this bill.

I'm happy to be here today for this discussion on the proposed Greenbelt Protection Act, 2004. We are now one step closer to the realization of one of this government's commitments to the people of Ontario, and we are another step closer to the creation of permanent greenbelt protection in the Golden Horseshoe.

This government recognizes the importance of, and has made a commitment to, protecting green space. Ontarians need green space because it improves our quality of life. A high quality of life is what this government was elected to deliver, and we intend to do just that.

We are taking a number of decisive steps toward smart growth by introducing legislation that would create a permanent Golden Horseshoe greenbelt. By better managing urban growth, we enhance our quality of life, and creating a permanent greenbelt is one of the ways we can manage growth responsibly. Achieving the right kind of growth in the right places is what's needed. We are changing the direction of government, and we certainly think that's a real, positive change. The proposed Greenbelt Protection Act, 2004, now before the Legislature and having been given second reading, is a prudent and crucial first step in the government's overall approach to properly managing growth.

In 2001, the population of central Ontario, much of which is located within the smaller Golden Horseshoe area, was 7.5 million people. It's expected to grow to 11 million by the year 2028. This means that we can expect 3.5 million more people to be living in central Ontario in a little more than 25 years.

Coupled with this population growth will be employment growth. We could ask ourselves, "What is the draw to this area; why do people come here?" Population growth in central Ontario, I believe, is a reflection of the high quality of life we enjoy here. It's also due to the economic opportunities available to its residents. The region is attractive to those in research jobs, but also to those in search of jobs, including international immigrants and those migrating from across the country. Ontario is a place where people simply want to be, and we welcome that. Population and economic growth are good, and we will ensure that this growth is managed responsibly.

But when growth is not properly managed or supported, quality of life is adversely affected. Poorly planned development can result in increased air and water pollution and loss of green space and agricultural land. Poorly planned development can result in economic losses to

businesses when they cannot get their goods to market. It also means that working parents are spending too much of their time commuting. Studies show disturbing results if current trends persist for central Ontario. If your commute takes an hour now, 30 years from now it could take two hours. That's another hour every day that a commuter won't have to spend with their family. It's actually two hours, an hour coming and an hour going. That's not what we call quality of life.

In another 30 years, unchecked development could consume another 1,000 square kilometres of land. That's nearly twice the size of the city of Toronto. This area is home to considerable areas of prime agricultural land, and we have some of the best agricultural land in North America. That's sacrificing Ontario's food, and that's not what we call quality of life.

The population trend clearly will be a challenge to balance a wide variety of our society's needs. The government must guide the future development of the Golden Horseshoe to ensure that it stays a healthy and prosperous region. We simply cannot ignore this challenge. Our government is taking the critical steps to manage that growth and develop in a responsible manner. It would be irresponsible for our government not to give careful consideration to the potential effects of sprawl without ensuring that a plan is in place for careful, managed growth.

There are many factors that need to be examined. These factors are interrelated and will require careful consideration before we can establish a greenbelt in the Golden Horseshoe. When discussing greenbelt protection, we must talk about permanent environmental protection. The Ontario government will protect and maintain our environment to ensure it is safe, clean and liveable. Ontarians understand, and we understand, that a clean environment and a strong economy go hand in hand. Together they mean a high quality of life.

We must talk about the protection and sustainability of agricultural lands. Protecting particularly sensitive regions, such as the Niagara tender fruit and grape lands, and making them viable over the long term, must be an important consideration. We will ensure that agricultural viability is an important aspect of growth management planning.

Many of us have a specific interest in the protection of culture, tourism and recreation opportunities in the region. These things must also be discussed.

Last, but certainly not least, we must ensure that our industries have a competitive business climate, efficient and high-quality infrastructure and access to strategically located employment lands to contribute to the region's wealth and quality of life.

The greenbelt study area is a foundation for both our provincial and national economies. Our economy is vital not only to Ontarians but to Canada as a whole. We must be able to move through the Golden Horseshoe to ensure our economy stays healthy.

The proposed Greenbelt Protection Act will allow us the time we need to discuss these issues. It will allow us



to seek out and find the balance we need. It will also clarify provisions in the Oak Ridges Moraine Conservation Act, 2001, that deal with lands already in different stages of development when the act was proclaimed.

Once we have discussed all these factors and have worked out a coherent strategy for balancing all these important interests, we have another task. We must discuss how to manage a greenbelt into the future for the generations of Ontarians to come. Included in the bill is a study area to provide a framework for our discussion. The study area includes Toronto, the regions of Durham, York, Peel and Halton, the city of Hamilton, the Oak Ridges moraine plan area, the Niagara tender fruit and grape lands and the Niagara Escarpment plan area.

The bill also includes a moratorium on new urban development. This moratorium would mean that until December of this year, there would be no urban development on land outside urban settlement areas unless development has already been approved. This does not mean that building in the Golden Horseshoe will stop. On the contrary, all land previously designated for urban development will remain available for urban development, subject to the normal municipal planning processes.

1620

In the greater Toronto area, the supply of urban land will already accommodate the demand for single detached dwellings for the next 10 to 15 years. For more intensive developments such as apartment buildings and condominiums, the land available will accommodate demand for 20 years. This information is based on forecasts prepared by the province and municipalities in which this development will occur. But these time frames could be extended if municipalities undertake work to encourage more compact types of urban development during this period.

The proposed greenbelt protection area creates opportunities to do just that, by giving municipalities the time to promote compact urban development in their communities. In doing this, communities will encourage the preservation of green space, and land in the agricultural and rural areas would still be able to be developed for rural and agricultural uses. Normal municipal planning processes will ensure appropriate development in these areas. During this brief time out, while we are maintaining the status quo on new urban development, we will be working on a plan for the future, a plan for permanent greenbelt protection. The proposed moratorium will protect the status quo only until the consultation phase is complete and permanent greenbelt protection is in place.

The government is committed to consulting with stakeholders and the public on the establishment of a permanent greenbelt, and the Greenbelt Protection Act would give us the time to do that. We appointed the greenbelt task force in February of this year to help us define the scope, content and function of a greenbelt. I might say that they've been meeting on a weekly basis. They will work toward sustaining and improving the overall quality of life for present and future residents. The task force will oversee upcoming stakeholder and

public consultations on the scope, content and implementation of the proposed greenbelt. The consultation will start on May 20.

During the time out that the Greenbelt Protection Act would provide, the task force will gather the information it needs to formulate recommendations for action. After receiving recommendations from the task force, the government will consider the most effective way to establish and permanently protect the proposed greenbelt in the Golden Horseshoe.

The members of the greenbelt task force were chosen to represent a wide variety of interests and different viewpoints on greenbelt protection. Some of the interests represented are home builders, the development industry, municipal government, environmental protection, agriculture, the aggregate industry and individual citizens. The task force has been hard at work preparing for this consultation. We need to collect the views of these individuals to be sure all of the factors that we know are important are considered as we build the greenbelt, because we are consulting on the best way to create a greenbelt that would ensure the long-term protection of a number of different resources. Natural heritage systems, water resources and agriculture simply must be protected. We must also provide for resource management, recreation and tourism in the Golden Horseshoe.

Municipal planning plays a large and important role in the successful protection of a greenbelt. Clear limits set on development can ensure that the greenbelt is protected for the long term. Housing, for example, can be constructed in areas where services already exist and in areas that do not put important natural resources at risk. Growth also provides the opportunity to revitalize under-used lands and achieve objectives such as the redevelopment of brownfields.

In addition to maintaining green space, other benefits are easily recognized. By focusing growth in existing built-up areas, the escalating public costs for roads, garbage pickup, leasing, transit and other services in urban sprawl areas can be controlled. This can reduce pressures on the municipal tax base and the taxpayer.

As I said before, through containing sprawl and encouraging growth management, we will enhance our quality of life. Creating a permanent greenbelt is one of the ways we can manage growth responsibly. We understand that the greenbelt is one component, one of a number of different government initiatives underway that will contribute to the larger growth management plan. The proposed Greenbelt Protection Act, 2004, is one very important component and is a very important first step. We are building strong communities. We believe that's real, positive change.

I'd be more than pleased to answer any questions.

**The Chair:** Thank you, Minister.

Will there be any questions?

**Mr Jerry J. Ouellette (Oshawa):** Thank you for your presentation. I have a number of questions. First, it's not very clear about the boundaries of the greenbelt area. When you're looking at it and trying to find out the plan-



ning, is there any way we can get some defined boundaries and how they play out? The reason is that developers are asking: "Is it applicable to us? Is it not applicable to us?"

You mentioned the fact that if they have a current plan or they're in the plan already, that development would be allowed to continue. When you speak about that, does that mean if they have a building permit or does that mean if they're part of the official plan at this time, they would be allowed to continue? Those are two things to start off with.

**Hon Mr Gerretsen:** If land is located within an urban designated area, which would normally be in the official plan, then building can continue, provided that the zoning is in place. Obviously that would have to be worked out with the local municipality. The zoning would have to be put in place by the municipality. The whole purpose of the act is not to prevent any development from taking place that is contained within urban designated areas.

**Mr Ouellette:** So which areas, then? For example, within my own riding, or even in the region of Durham for that matter, a lot of the Oak Ridges moraine was under an official plan; part of the development was to come forth. What you're saying here is that those areas would be allowed to continue so long as they were under the official plan?

**Hon Mr Gerretsen:** That's correct.

**Mr Ouellette:** OK. A couple of other things: When I spoke to some developers it really didn't bother them, because what they expected to take place was that they were going to leapfrog, and that meant that development on the south side of the Oak Ridges moraine, predominantly in the region of Durham, would now take place on the north side, so instead of developing, say, in Oshawa, which goes right up on to the moraine, they would go to Port Perry or Peterborough. Are you expecting a leapfrogging of development in those areas?

**Hon Mr Gerretsen:** Quite frankly, it's part of the growth management mandate that Minister Caplan is looking at as well. But let's be realistic about this. If we expect another 3.5 million people to come into this area over the next 25 years, it may very well be that a certain amount of leapfrogging goes on. But you've got to remember that leapfrogging is only taking place, if it is going to take place, because of the fact that this land that we want to designate as a greenbelt is either environmentally sensitive or it's excellent agricultural land that should be preserved. Whether leapfrogging will take place, I suppose in the long run, will develop to a large extent on how counties like Simcoe or north of the greenbelt in Durham will be designated in the future by councils and by the various planning authorities.

**Mr Ouellette:** I actually have a very strong background and a lot of details on that. I'm sure you're well aware that water pressure or the pressure put on by the moraine forces the aquifers down and then they come up as springs just outside the greenbelt area, which will be dramatically affected. I hope that those will be looked at and how they're going to apply.

I know that eventually there are going to be books written and chapters dealing with such items as urban cholesterol, which will be traffic congestion and things like that. Once you get this leapfrogging taking place, is there anything in place to accommodate—I know in our area, bringing people down from Port Perry, where new developments are taking place, is becoming more difficult. Is there anything taken into consideration to account for things like traffic congestion that's expected as it develops outside those areas?

**Hon Mr Gerretsen:** I think as those areas get developed, quite frankly, what's equally important is to make sure there's employment land set aside for that kind of development so that the kind of urban sprawl conditions that we have now, with people having to drive into the centre of this urban region for their jobs etc, will not take place. Hopefully in the long run, and I'm speculating here to some extent, it isn't just residential development that we're talking about beyond this area. Hopefully there will be some employment lands as well so people simply won't have to travel that far to their jobs.

1630

**Mr Ouellette:** The last question I bring up is one that Regional Chair Roger Anderson specifically asked that I mention if I had the opportunity. They hoped there would be an exemption for 400-series highways. Predominantly the 407, coming through the region of Durham, falls somewhat into the Oak Ridges moraine. They hope that's taken into consideration so that traffic congestion can be dealt with.

**Hon Mr Gerretsen:** There's no question about it that the Ministry of Transportation will be involved in this, not only from a highway viewpoint but also from a transit viewpoint.

There is one other thing that I might say. What the task force has been doing so far, among other things, is setting out the criteria whereby the greenbelt protected area will be defined. They are not in the process of actually drawing a line on a map. That will be done in accordance with the criteria they come up with in their final recommendations. That will then be turned over to the planners and the engineers to define the actual lines.

We are aware of a number of situations where people have some very legitimate concerns about a particular type of development etc that perhaps should or should not be exempted, and they are in the process of drawing up some criteria whereby the various projects can be judged as to whether or not they should be allowed to proceed.

**The Chair:** Ms Churley?

**Ms Marilyn Churley (Toronto-Danforth):** Minister, are you feeling a little hot? It's a little warm in here.

**Hon Mr Gerretsen:** It is warm in here.

**Ms Churley:** That's my opening question.

There are a lot of questions, and we'll get to them. I don't know if you're going to be able to make it to any of the hearings, but it would be great if you could come.

I'm wondering about your relationship with the Minister of Transportation and if there are conversations



between the two ministries about some of the problems with the proposed highways in some of these hot environmental spots. I'm just wondering what you're going to do about that, because it is a big problem. When you build highways in these areas, the development comes; it just does. What are your plans? How are you going to deal with that?

**Hon Mr Gerretsen:** I can tell you that one thing we've undertaken over the last four or five months is that we have a group that's called the G8: eight ministers and their deputies who actually get together—

*Interjection.*

**Hon Mr Gerretsen:** I know. It sounds huge, doesn't it?

**Ms Churley:** Or frightening.

**Hon Mr Gerretsen:** It's not that frightening. Actually the ministries are working well together, and particularly the four ministries directly involved—municipal affairs, environment, transportation and public infrastructure—in dealing especially with the kinds of concerns you've addressed.

We realize that with the Minister of Public Infrastructure Renewal having the growth management piece, if I can put it that way—it's through his ministry, after all, that the infrastructure needs of this area hopefully will be accommodated. We realize that transportation routes—whether it's transit or highway routes or other different ways of travel—are an integral part of that, and of course the environment is an integral part of that because we are talking here about very environmentally sensitive land. Really, the role of the Ministry of Municipal Affairs is to draw this all together and work with these other three ministries so we can come up with a comprehensive plan.

**Ms Churley:** Don't filibuster my question time, Minister.

**Hon Mr Gerretsen:** I would never do that to you.

**Ms Churley:** I am wondering if you'd be willing, as per questions in the House, to take some responsibility for the Castle Glen development on the Niagara Escarpment and put on a ministerial zoning order and stop that from going ahead.

**Hon Mr Gerretsen:** As you well know, this matter is before the Ontario Municipal Board right now. It would be highly improper for me to make any comments on that whatsoever. You've been in this position. You wouldn't make any comments, and I'm sure you wouldn't expect me to make any comments on that.

**Ms Churley:** If I were you, Minister, I'd reform that OMB in a hurry then.

**Hon Mr Gerretsen:** We're doing that as well, but that's a subject for another day.

**Ms Churley:** The problem with this, quite seriously, as you know, is that it's the first year-round town that's been built on the Niagara Escarpment since the 1970s, when the plan came into effect. You know the details of how the agreement was made. Because an agreement was made between most of the players, plus the new members on the Niagara Escarpment Commission—and the town

even said they went along because they couldn't afford to go any further with protesting or going through legal processes—the OMB is unlikely to overturn it. I congratulate your government on the new appointees to the Niagara Escarpment Commission, but it's unlikely—in fact, unheard of—that they will overturn those decisions, even though I'll bet you anything they think it's wrong. It's a major problem, and I'm wondering if I could get a commitment from you to at least take a second look at it.

**Hon Mr Gerretsen:** I can't comment on that.

**Ms Churley:** OK. I will keep this fight up.

I wanted to come back briefly to what we refer to as leapfrog development. Listening to you carefully here, the way you put it is that your view or vision of this greenbelt legislation, the greenbelt area, is mostly to protect environmentally sensitive areas and agricultural land. If that's the framework in which this legislation exists, leapfrog development is not a big problem for you because, in your view, as long as environmentally sensitive and agricultural lands are being protected, you're OK with that.

**Hon Mr Gerretsen:** I'm not saying I'm OK with that at all. It all depends on what's planned in the area beyond the greenbelt. All I'm saying is that this act is primarily concerned with protecting the environmentally sensitive nature of this particular area.

As I've mentioned before, I think your questions relate a lot more to the ultimate growth management of the larger GTA and how those 3.5 million people we expect here over the next 25 years can be accommodated. I'm not for a moment saying we're not interested in that, but as far as this particular bill is concerned, our main concern is to make sure the greenbelt that exists around Toronto, which ties together the Oak Ridges moraine and the Niagara Escarpment land, is protected. You may raise some very valid issues about the balance of the land beyond that, which obviously will have to be looked at very carefully as well, and other ministries are right now.

**Ms Churley:** Of course—

**The Chair:** The time is up.

**Ms Churley:** He had more time than me.

**The Chair:** No, I calculated it. I timed it.

**Ms Churley:** Are you coming to any of the hearings?

**Hon Mr Gerretsen:** I'm not sure.

**The Chair:** Mr Patten?

**Mr Richard Patten (Ottawa Centre):** I missed the first part of your presentation, but something comes to mind that has often disturbed me and I think perhaps a lot of members around the table as well. I think I understand the purpose of the study, to set up the criteria by which you're going to look at protecting the greenbelt, which has a lot of functions within it. But the area that concerns me most, quite frankly, is farmlands, where people grow. I'm not too worried about the wine industry so much, because they're flourishing, but I'm worried about other farm areas and the pressure that is always put on the agricultural area. We must have tens of millions, if not hundreds of millions, of acres on some prime agricultural land in Ontario.



It's a way of life. It's part of what we are. It's our food source. We're not in a tropical climate, so we can't grow year-round unless we rely somewhat on the indoor greenhouse producers. But it seems to me to be very precious to our way of life, and I'm curious to see whether you have any thoughts on this or whether that indeed will be a particular area to look at. Because when you use the term "normal process of development" and developing official plans that are used now, the normal process ends up getting rid of a lot of agricultural land.

1640

**Hon Mr Gerretsen:** That's exactly what we're trying to prevent here. First of all, there is an agricultural representative on the task force, an individual who either was a former president or certainly on the executive of the OFA: Mary Lou Garr. She has played a significant role in that.

The issues you raise are very valid. I think the main issue the farm community has is that they want to make sure the viable farm operations that exist right now are not going to be hampered from continuing that way once the greenbelt protection is in place. So one of the things the task force is looking into, and obviously the ministry will as well once the task force has reported and we're implementing the greenbelt, is to make sure that farms and the agricultural community will continue to be viable operators within this greenbelt area.

We're not just talking about environmentally sensitive lands that have to be protected from an environmental viewpoint; we're also talking about making sure that agricultural land can be protected as well for agricultural purposes, so that farm industries are not going to be hampered by the greenbelt legislation.

**Mr Delaney:** Just two short questions: Can something like a hydro transmission corridor, a telecommunications line or a gas transmission corridor traverse a protected greenbelt area?

**Hon Mr Gerretsen:** I believe so, but I think I'll turn it over to Barbara here.

**Ms Barb Konyi:** This legislation is only doing a few things, and that's setting up a greenbelt study area and a proposed moratorium. The moratorium only impacts applications that are under the Planning Act. If any of those matters you are listing there are not subject to a Planning Act application, they will not be subject to the proposed moratorium.

**Mr Delaney:** One final question: What would govern how close a highway, for example, or an industry that discharges effluents into the air or the water could be located to a protected area?

**Ms Konyi:** That would be subject to the regulations. Some things will be put in standards in official plans in terms of setbacks from environmentally sensitive features, but there's also a whole series of environmental legislation that governs a lot of the things you're mentioning, like the Environmental Protection Act and the Ontario Water Resources Act. So there are a lot of provisions.

**The Chair:** The time is up for the minister. Thank you very much, Minister, for answering those questions. Now the members will have a chance to ask questions of our technical people.

**Hon Mr Gerretsen:** Thank you very much, Mr Chair. I wish you well in your deliberations and your travels. As you travel throughout Ontario, I'm sure you will get some good deputations and have a good time doing it as well.

**The Chair:** Thank you.

Now it's going to be open to questions to the technical staff. We have Barb Konyi and Irvin Shachter. Do you want to brief us on the information and technical points?

**Ms Konyi:** Actually I have presentation slides that are going to be passed around right now, and I'll just wait for that.

**The Chair:** While that is being distributed, I have a question for you. If the urban development has been identified in the official plan but municipalities have not identified this development in their zoning bylaw, would that mean that the developer could still have the zoning amendment changed or identified in the official plan?

**Ms Konyi:** At this point in time, yes. The proposed moratorium would be based on lands designated in the official plan, so it's based on the official plan designation. If you have an urban designation in the official plan, then all other planning applications that would follow from that would be allowed to continue. It's the expansion on to rural and agricultural lands that the moratorium would seek to stop.

**The Chair:** Very good. Thank you.

**Ms Konyi:** Are we ready?

**The Chair:** It's all yours.

**Ms Konyi:** Good afternoon, Mr Chair and members of the committee. I'm here to provide you with your technical briefing on Bill 27, the proposed Greenbelt Protection Act, 2004. Your binders contain copies of the bill. That's in tab 1. The compendium to the legislation is in tab 2, as well as the Oak Ridges Moraine Conservation Act, 2001, which I'll refer to later, and that's in tab 3.

Moving on to page 2 of the presentation, my presentation will cover the details and highlights of Bill 27. I'll briefly go over the details of the minister's Golden Horseshoe zoning order, which is Ontario regulation 432/03. Finally, I'll speak about the activities of the Greenbelt Task Force and how they relate to this bill.

On to page 3: Bill 27, the Greenbelt Protection Act, was introduced in the Legislature and was given first reading on December 16, 2003. We all know that the bill recently received second reading on April 28, and it was referred to this committee for consideration. That's why we're here today, to begin the standing committee process.

As the minister stated previously, this bill is the first step toward the creation of a permanent Golden Horseshoe greenbelt and is part of a larger growth management initiative. This proposed legislation allows time out for the Greenbelt Task Force to provide recommendations and the government to consult and determine what shape

the permanent greenbelt will take. In other words, this bill is the beginning of the process, not the end product of the greenbelt initiative.

Moving on to page 4: The proposed legislation does four main things. I'll list them and give you the details in later slides.

First, it establishes the greenbelt study area and sets out the geographic limits of the area to be under consideration for greenbelt protection. That's in section 2 of the legislation, as well as schedule 1. Second, it imposes a moratorium within key areas of the greenbelt study area. That's sections 4, 5 and 6, as well as schedule 2. Third, it stays matters that are appealed to the Ontario Municipal Board. Sections 6 and 11 refer to that. Fourth, it has provisions to strengthen the protection of the Oak Ridges moraine, which is in section 14 of the bill.

On to page 5 of the slides: In terms of the main components, the first one is the establishment of the greenbelt study area. The bill establishes this area. It is based on a written description that is found in schedule 1 to the bill, and there is no map. For clarification purposes, as the minister stated, it includes the regions of Durham, York, Peel and Halton; the cities of Hamilton and Toronto; the tender fruit and grape lands as designated in Niagara region's official plan; the lands within the Niagara Escarpment plan area; and the Oak Ridges moraine area as identified in the Oak Ridges Moraine Conservation Act, 2001.

To clarify Mr Ouellette's question, the municipalities that are identified follow the municipal boundaries as outlined. The only area where it deviates is the land in the Niagara region official plan. It follows the designations from that document, as well as the two provincial plan boundaries.

Moving along to page 6: The moratorium is also within key areas of the greenbelt study area. The proposed moratorium is on changes from rural and agricultural to urban uses. It will allow time for the Greenbelt Task Force to provide their recommendations and the government to consult and determine what shape the permanent greenbelt will take. The moratorium on new urban uses is on key rural and agricultural lands within the study area, and it would be retroactive to December 16, 2003. That happens to be the date of first reading of the bill.

1650

On to page 7: We're continuing to describe the moratorium. The proposed moratorium restricts the ability to apply for and receive municipal approval of specific types of planning applications for urban uses. Urban uses are defined in the bill. The planning applications that the proposed moratorium would apply to include official plans and official plan amendments, zoning bylaws and zoning bylaw amendments, as well as plans of subdivision.

The proposed moratorium, as currently worded, does not include the Niagara Escarpment plan area, the Oak Ridges moraine area or the city of Toronto. Existing legislation and provincial plans cover the Niagara Es-

carpment and the Oak Ridges moraine. The long-established Niagara Escarpment plan has been in place for over 20 years. The more recent Oak Ridges moraine conservation plan came into effect in 2002 and does not allow anyone to amend the plan for urban expansion. The city of Toronto is an urban area in its entirety.

Finally, the bill is intended to sunset on December 16, 2004, which is exactly one year to the date of introduction and first reading. Therefore, by virtue of the sunset date, the proposed moratorium is a temporary measure, or a time out, to allow the Greenbelt Task Force to provide the recommendations and the government to consult and determine what shape the permanent greenbelt will take.

On to page 8, matters appealed to the Ontario Municipal Board: The bill proposes to automatically stay planning applications for urban uses in the moratorium area that are before the Ontario Municipal Board or the joint board under the Consolidated Hearings Act as of December 16, 2003. The bill also provides the Minister of Municipal Affairs and Housing with the ability to stay any matters in the greenbelt study area that are before either the Ontario Municipal Board or the joint board under the Consolidated Hearings Act. This provision is broader than the first bullet, as the staying of proceedings is only within the moratorium area. The minister would have the ability, through this section of the proposed legislation, to stay matters anywhere within the greenbelt study area.

On to page 9, the main component of the bill, strengthening the protection of the Oak Ridges moraine area: The bill does propose changes to the Oak Ridges Moraine Conservation Act, 2001, to help strengthen the Oak Ridges moraine by clarifying the existing transition provisions in that legislation. There have been some differing interpretations of the transition provisions of what was originally intended in this legislation. This change will help clarify matters.

The Oak Ridges Moraine Conservation Act already contains a section in it that gives the Minister of Municipal Affairs and Housing the authority to stay certain matters that have been appealed to the Ontario Municipal Board. Bill 27 contains provisions to extend that authority of the minister to be able to stay any transition application that has been appealed to the Ontario Municipal Board within the Oak Ridges moraine.

The bill also proposes to add another clause to the Oak Ridges Moraine Conservation Act to provide the authority to refer appeals, which have been stayed from the item I just described above, to a hearing officer who would make recommendations to the Minister of Municipal Affairs and Housing for a decision, which is subject to the approval of cabinet.

On the next page, page 10, I'm going to move on to the other legislative powers that are contained in Bill 27. The bill would give cabinet the authority to make regulations. This would be in subsection 8(1) of the legislation. There are three different points here. The first is to change the boundary of the greenbelt study area. If, for



whatever reason, there is a desire to change those boundaries, the legislative authority to do this would be through a cabinet regulation. There's also the same ability, through cabinet regulation, to change the areas to which the moratorium applies. Finally, cabinet has the authority to make regulations to exempt land or any use of land or class of uses of land from the moratorium.

Now, if there's a desire to provide relief from the moratorium, this would allow cabinet to make exemptions to the moratorium generally by a class of uses, like highway-commercial, commercial-industrial or a particular use such as a gas station, a specific industry or a site specifically for a property; for example, the gas station at such-and-such Elm Street. Therefore, if a regulation were made for this purpose, there is the ability through this regulation power to tailor the exemptions to individual circumstances.

Page 11 of the slides: The bill would also give the Minister of Municipal Affairs and Housing the legislative authority to make regulations in a few instances. One is to make changes to the definitions of "urban settlement area" and "urban uses." Those definitions are found at the beginning of the bill. The minister can also make regulations to prohibit site alteration, tree-cutting or the removal of trees, or the grading of land in the greenbelt study area. The minister can set out transition rules through regulation, which can detail how applications that were in process at the time of first reading of this bill would be treated, as the bill is retroactive to the date of first reading.

Page 12 of the slides: I'm going to briefly describe the minister's Golden Horseshoe zoning order. The Minister of Municipal Affairs and Housing put in place a minister's zoning order for the area covered by the same area as the greenbelt study area proposed in this bill, as an interim measure to maintain the status quo while this bill is proceeding through the legislative process and the proposed legislative moratorium could come into effect.

The zoning order applies to rural and agricultural lands within the greenbelt study area that are outside of designated urban settlement areas in municipal official plans. The zoning order permits uses that lawfully existed on December 16, 2003, or where the uses are permitted by the applicable municipal zoning bylaw on December 16, 2003. Again, that is the date of first reading of Bill 27, and is also the date to which the proposed legislation would be retroactive.

I want to also confirm with you that the zoning order does not apply to the Oak Ridges moraine area, the Niagara Escarpment plan area and the city of Toronto, as well as a couple of other areas. There's a minister's zoning order on the land surrounding the Pickering airport. As well, there's the Duffins Rouge ag preserve zoning order. That was just to eliminate having a layering of ministers' zoning orders in that area.

We're going to move on to slide 13, and I'll just basically go over a bit about the Greenbelt Task Force. By way of background—and the minister covered some of this as well—the Minister of Municipal Affairs and

Housing appointed the 13-member Greenbelt Task Force, chaired by the mayor of Burlington, Rob MacIsaac. The task force is made up of a broad cross-section of stakeholders, including municipalities, the development industry, home builders, aggregates, environmental and agricultural interests.

The task force has met 13 times since February, and its preliminary considerations for approaches to greenbelt protection are contained in their consultation document, which is due to be released later this week. In addition to their regular meetings during March and April, the task force also consulted with municipal politicians and their staff at a series of meetings in Hamilton, Burlington, and Durham, York and Peel regions, as well as with the recently formed GTA countryside alliance mayors, and that meeting was held in Caledon. All these meetings helped the task force shape their consultation document. The task force consultation document covers topics such as agricultural protection, the Niagara tender fruit and grape lands, environmental protection, infrastructure, transportation, future resource needs, including mineral aggregates, as well as recreation and tourism opportunities and administration and implementation of the greenbelt.

A series of theme-based stakeholder workshops and geographically dispersed public meetings will be held by the task force on the scope, content and implementation of a future greenbelt strategy. The workshops and public meetings begin on May 20. The first one happens to be in King City, and the theme that day is environmental protection. The workshops and public meetings run until June 16. The last scheduled meeting is in Burlington, and it happens to be on administration and implementation.

#### 1700

The task force also provided advice on the criteria and conditions for possible exemptions to the minister's zoning order and the moratorium proposed in Bill 27 at the request of the Minister of Municipal Affairs and Housing. There are some backgrounders in your binders that describe this in greater detail. Flowing from these suggestions, the minister is proposing as a first step to amend the minister's zoning order to provide relief for certain situations while not impacting any long-term strategy for greenbelt protection.

Following consultation, the task force will provide recommendations to the government. Consultation on the proposed course of action is expected in the fall. This will coordinate policy direction with the other provincial initiatives that are taking place, including planning reform, such as Bill 26, which is currently in second reading debate in the Legislature, and the PPS, the provincial policy statement. There are transportation, source water and growth management initiatives taking place as well.

That concludes my presentation. I'm pleased to take any questions.

**The Chair:** Thank you. Questions or comments?

**Ms Churley:** Thank you very much for that presentation. We've got copies of your slides. Do we have a copy of all your remarks?

**Ms Konyi:** No.

**Ms Churley:** Could we have those provided? They're very thorough; a good overview.

**Ms Konyi:** I've written on them. Would it be helpful if I could just clean up the copy?

**Ms Churley:** I don't need them right now; for later. When will we have the Hansard?

**The Chair:** When will we have the Hansard? Two days?

**Ms Churley:** We're putting you on the spot. If it's within a couple of days, that will be fine. They'll be provided? OK.

I'm not going to ask a lot of questions right now, but one of my concerns is around the very tight timelines. On one hand, I am supportive of moving quickly on this and getting protection, because we really need it, but this is a very complex area, as you well know, with all the different ministries involved. There's a moratorium placed until the deadline. When is that? I don't have the paper.

**Ms Konyi:** December 16 of this year.

**Ms Churley:** Do you think it can all be done by that time?

**Ms Konyi:** Nothing's impossible.

**Ms Churley:** If it's not, what happens then? Would there be an extension, do you think? I guess that would be the minister's decision.

**Ms Konyi:** It's not my position to comment on that.

**Ms Churley:** So you think nothing is impossible, but it is a very tight time frame to get it all done.

**Ms Konyi:** We are working very closely with all the partner ministries. The minister described his group of eight ministries as working together. We also work at a staff level to coordinate and work together. So we're trying to integrate and make sure that one initiative informs the other and that they're all coordinated.

**Ms Churley:** The other thing is, again, just technical; we talked about it in the subcommittee, and it may have been discussed already. Are we going to be provided with a detailed map for the committee hearings so its very clear where the belt is, so we can point out to people and we can see very clearly the area of land we're talking about?

**Ms Konyi:** The request is to have a map.

**Ms Churley:** That's it. Thank you.

**The Chair:** I would just like to advise that each party will have a total of 10 minutes. If they want to take it at different times, they could do that.

**Mr Delaney:** Just a question for clarification on the exemptions: Could you perhaps sum up for me what types or classes of organizations or projects would not be exempt?

**Ms Konyi:** The advice the task force gave to the minister was that the exemptions be minor in scale. They support the intent of the greenbelt, so they wouldn't undermine long-term greenbelt protection. They wouldn't involve the extension of infrastructure unless it's to sup-

port something that's already approved and dependent on that infrastructure and very late in the process, so that things have progressed to a point where sufficient approvals have been given and it's very difficult to turn the clock back.

**Mr Delaney:** Such as?

**Ms Konyi:** Say, a final approved plan of subdivision or a development that has zoning but has a holding zone on it and the municipality has to lift the holding. It just has to fulfill a certain number of conditions and remove the holding provision, and everything else could fall into place. Those are some examples of how far advanced in the process.

**The Chair:** Any other questions?

**Mr John Yakabuski (Renfrew-Nipissing-Pembroke):** I share Ms Churley's concerns about the time. The task force was appointed in February, and by then two months had slipped by. We'll be starting workshops near the end of May. We know what the summer's like. I really have concerns that they'll be ready to implement this by December 16, which is the expiry of the moratorium.

**Ms Konyi:** The task force will be consulting over May and June. They will provide their recommendations based on what they hear back to the government, and then we'll go from there. We expect to be back doing some kind of consultation in the fall as to permanent greenbelt protection, but at this point, I couldn't comment any further on that.

**Mr Yakabuski:** Will this be coming back to committee?

**Ms Konyi:** Not through this bill, because, once again, the purpose of this bill is to set up the greenbelt study area and put the moratorium in place. It's the first step to permanent greenbelt protection. It's not the final product.

**Mr Yakabuski:** Are we going to have some kind of interim report provided fairly soon, then? Will the task force release a public consultation document that's going to be coming out?

**Ms Konyi:** Yes, the Greenbelt Task Force consultation document is due to be released this week, in advance of the first scheduled meeting. Right now, on our Web site—

**Mr Yakabuski:** Why wouldn't we do that before we have some meetings? If people are going to be making presentations to the committee, would that not be part of the process?

**Ms Konyi:** Like I say, this bill is to establish the greenbelt study area as well as to put the legislative moratorium in place. It is not about permanent greenbelt protection. The task force is charged with looking at the broader aspects of it and reporting back on some recommendations to the government.

**Mr Yakabuski:** It would just be nice to have that before we actually start listening to people.

**Ms Konyi:** We'll get it to you as soon as it's released.

**Mr Yakabuski:** We know what one party is already saying or what their feelings are. It's something to digest and understand or attempt to understand before we start



listening to people who may want to make presentations on where they feel this legislation should go.

**Ms Konyi:** It is my understanding that this committee will get copies of the task force consultation document as soon as it's public.

**The Chair:** Other questions? The only comment I have is, you say that we should be getting the task force report, but the public hearings start this Friday.

**Ms Konyi:** It's a consultation document, Mr Chair. It just speaks to the various issues that I spoke of. It's a document for the purposes of consultation, for them to talk about the broader greenbelt protection. It's based on the various themes of agricultural protection. I should clarify that: It is not a government report, it is the task force report, and it's based on what they want to go out and consult on. But for your purposes, we will be able to give you a copy of that.

**The Chair:** In other words, we should be getting this task force report, as you call it—

**Ms Konyi:** It's their consultation document. That's what it is.

**The Chair:** —the consultation document, before we start the clause-by-clause?

**Ms Konyi:** Oh, yes.

**The Chair:** Very good. Any other questions?

**Mr Wayne Arthurs (Pickering-Ajax-Uxbridge):** I think one of the things we will have to be very clear about with the deputants or presenters is that this is to establish the greenbelt study area and not the greenbelt. I somehow suspect some of the folks who come to see us may think that this bill is about establishing the greenbelt. I think there will have to be considerable clarity for those folks arriving.

**The Chair:** Any more questions? If none, I thank you very much. If people want to stay here for a few minutes, we'll let you know where we're going on Friday. We're just waiting. Is it there?

**Mr Yakabuski:** It's in there.

**The Chair:** It's in the package. OK. Can we move the adjournment of the meeting?

**Mr Delaney:** So moved.

**The Chair:** Moved by Mr Delaney. Any objection? All in favour? The meeting is adjourned.

*The committee adjourned at 1710.*











## CONTENTS

Wednesday 12 May 2004

<b>Subcommittee report</b> .....	G-269
<b>Greenbelt Protection Act, 2004, Bill 27, <i>Mr Gerretsen</i> / <b>Loi de 2004 sur la protection de la ceinture de verdure</b>, projet de loi 27, <i>M. Gerretsen</i></b> .....	G-269

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G-12



G-12

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First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Friday 14 May 2004

# Journal des débats (Hansard)

Vendredi 14 mai 2004

**Standing committee on  
general government**

Greenbelt Protection Act, 2004

**Comité permanent des  
affaires gouvernementales**

Loi de 2004 sur la protection  
de la ceinture de verdure



Chair: Jean-Marc Lalonde  
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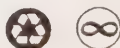
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Friday 14 May 2004

Vendredi 14 mai 2004

*The committee met at 1300 in the Quality Hotel Parkway Convention Centre, St Catharines.*

## GREENBELT PROTECTION ACT, 2004

LOI DE 2004 SUR LA PROTECTION  
DE LA CEINTURE DE VERDURE

Consideration of Bill 27, An Act to establish a greenbelt study area and to amend the Oak Ridges Moraine Conservation Act, 2001 / Projet de loi 27, Loi établissant une zone d'étude de la ceinture de verdure et modifiant la Loi de 2001 sur la conservation de la moraine d'Oak Ridges.

**The Chair (Mr Jean-Marc Lalonde):** I will call this meeting to order. First of all, I'd like to welcome you all to this public hearing on Bill 27, An Act to establish a greenbelt study area and to amend the Oak Ridges Moraine Conservation Act, 2001.

The groups that will make presentations today will be allowed 20 minutes. The 20 minutes could be taken by the presenter or some time may be left for a question period. Today we have three parties represented here.

**Ms Marilyn Churley (Toronto-Danforth):** Three official parties.

**The Chair:** Three official parties, yes. I said "three parties."

If there is only, let's say, a minute and a half left at the end, I will not split the minute and a half in three. I will alternate. The first one will be the official opposition, then the official NDP and then the Liberals. We will make sure that everybody has a chance.

## TOWN OF LINCOLN

**The Chair:** The first group will be the town of Lincoln, Mayor Bill Hodgson. Your Worship, on behalf of the committee, I'd like to welcome you to this public hearing. Again, you have 20 minutes. You can take the whole 20 minutes or leave some time for questions at the end of your presentation. You may proceed.

**Mr Bill Hodgson:** Thank you very much. I'm very pleased I was invited to be here today. I'd like to take this opportunity also to welcome all of you to Niagara. You may have noticed one of the most beautiful green stretches of the QEW as you were driving down here today, and that would be the town of the Lincoln. We're extremely proud of the stewardship that has been shown

by our farm community. We're very proud of our natural features.

The Greenbelt Protection Act, although it has what I might describe as scary aspects to it, is a good thing, and we look at it as a positive. We're very pleased to have this kind of opportunity to have a dialogue so we can ensure that it's done right. I'm so pleased that you're here today and that you're going to listen to my two cents' worth, at least this time, and I'm sure I'll have opportunity once again at some later date.

The town of Lincoln isn't green because of an accident. It's not green because we've just been left over, and we're not green because development hasn't got there yet. We have very restrictive policies in place in Niagara. They've impacted the town of Lincoln, but they've been welcomed in the town of Lincoln as well.

The policies that are in place have encouraged us over the years to maintain that green focus in our town. In fact, I think it was in 1970, when the regional government was formed and the townships and villages were amalgamated, that one of the names on the list for our municipality was Lincoln Green. So we take it seriously and we want to see that it stays Lincoln green.

One of our main issues, and one of the alarm bells that goes off, is with the term "greenbelt," because we've always thought of ourselves in Niagara as the Niagara fruit belt. Fruit was a commodity, and the focus then was commodity. There was a realization that whatever you were doing to that area, you had to deal with the commodities involved. The term "greenbelt" then sort of implies that "green" has now become the commodity. While I think green is a commodity, and we market green as a commodity and welcome people—I know many of you have probably visited some of our green tourist destinations—it does open the door to interpretations that are not always friendly with every type of activity that is green and green-sustaining.

So I guess the main point we want to make is that whatever the greenbelt initiative ultimately becomes through this legislation and regulations that are proposed through its implementation, we're very concerned and interested that in Niagara, and specifically in the town of Lincoln, the focus, the perspective on the greenbelt is a perspective that supports and maintains a viable, vibrant and verdant agricultural community.

I'm going to embark very quickly on a short little story about the past. There are all these ironies that



happen in peoples' lives, and one of them for me is that within three weeks of being sworn in as mayor—and this is my first experience in municipal government—the Greenbelt Protection Act arrived. Back in the late 1970s, I was hired by the National Capital Commission in Ottawa to head a task force to prepare a management plan for the greenbelt. The reason they hired me—I have the report here, just as a little prop. I won't bore you with the report, but it's interesting that back that many years ago, and with a greenbelt of a different type, but still a greenbelt, the planning objectives were very similar.

They had problems. They had accumulated the land, and they had articulated the objectives, but they just didn't know how to get there. There were problems implementing it. Right near the start of this management plan, the biggest problem identified was that different groups brought different perspectives to the table when they talked about preparing implementation and management plans for the assets in the greenbelt.

One of our first initiatives was to break the greenbelt into sectors. We had conservation sectors, forestry sectors, recreational and multi-use sectors and then, importantly, there were 80 farms in what were farm sectors. When I say "sectors," I mean they were large geographic areas. The rural area north of the escarpment in the town of Lincoln really falls into one of those categories. I would suggest it is a farm sector.

So it's interesting that, all these many years later, here I am in a position to try to do what I can to help, once again, to have a workable greenbelt established. I'm committed to doing that, and our town council is committed to doing that too.

My next point comes to whether we're going to be positive or whether we're going to be negative. When I say "we," I mean those who actually develop the greenbelt plan, the greenbelt framework, the greenbelt initiative. If this exercise amounts to nothing more than a mapping of boundaries and the preparation of a list of uses that are not permitted, it will be perceived as—in fact, it will be—a relatively negative initiative. It will lead to resentment and will leave a lot of stones unturned, and I'm not sure the objectives will ultimately be realized.

There is another way of looking at it, however. If everyone involved is as committed to making the greenbelt work, as I am and as the farm community and the people who live in our small towns and villages in Niagara are, to the long-term preservation of the Niagara fruit belt area, then we will all join together and, through this process, we will declare that these lands are not worth less than they were yesterday. They are in fact, and must be declared as, a priceless national treasure, a priceless asset.

1310

This may sound silly, but I don't think it is. The way this exercise can in fact make this declaration is by ensuring that this is not just one more restrictive planning exercise, that it is much, much more than something that is just imposed. It must be seen as a very robust, very full

rural and agricultural development strategy and everything that might imply.

I think that today you're going to hear—so I'm not going to go into a lot of the specific issues that commodity groups are having to deal with. But if you will recall, back in the 1960s and 1970s, the province, through the Agricultural Rehabilitation and Development Act, put forward a lot of initiatives that were aimed at a system—not just the farm communities across Ontario but rural communities across Ontario—in adjusting to the kinds of pressures, the kinds of trends that they were experiencing at that time. There are a lot of important trends that others know more about and are more articulate in expressing than me, and I hope you'll hear some of those pressures and some of the trends today.

What this bill has the opportunity to do is to provide the framework for developing a very comprehensive rural development strategy. Nothing would please me more than to be able to tell the world and welcome the world as visitors to the town of Lincoln, knowing that this area is going to be a beautiful, green rural landscape with viable, sustainable farm units, with exciting small towns that offer a full range of high-end opportunities for visitors and residents alike. I think it can be achieved if we all work together to develop a comprehensive strategy.

I'll just give you, very quickly, a few of my ideas about implementation. The first point I want to make is that the initiative must be based on trusting the people who live in the affected towns and their locally elected governments. They can be trusted, because they will work to achieve these objectives. They can be trusted, and therefore need to be addressed from a point of trust, not from a point of, "We are going to do this to you." I don't mean to be negative in that, by there are overtones of that. It's very easy, obviously, for the local municipalities to feel that something's being done to them. I just want to know that something positive is being done to us. I think we welcome it.

The second point is timing. Timing is critical for a lot of initiatives. Whenever you intervene in the marketplace in a way that actually can affect the competitive land market, you can skew things very seriously and have a serious impact on people's investment. This is not to say that it can't be achieved. It's just that the order in which things occur here is very critical.

Again, this goes back to the positive message. We need to do some things that send out a positive message about the pricelessness, the invaluable part of these lands, before we start doing things which are perceived to in fact reduce their value. So I would just ask that we consider those things about timing.

We need to see a serious reinvestment in this province in research and marketing. There simply needs to be a reinvestment. I'll go back to the timing issue. We need to deal with content issues, stores for VQA wines. Those kinds of things need to happen before, or at least in tandem with, increasing the restricted land use. I just think it's time. They've got to move together or else we



actually bonus special interest groups, and I don't think that's the intention of this initiative.

The community reinvestment funds are in place to help rural municipalities shoulder some of the impact of not being able to attract the levels and the kinds of industry and commercial assessment that other communities can. I think that vehicle alone offers up opportunities for this initiative to, in a real sense, compensate municipalities and at the same time deliver the kind of relief to our agricultural community that needs some relief from the impact of the current assessment rules in terms of value-added production facilities on their farms. So these things need to be done in tandem.

I think I'm going to stop there. I have a few others in terms of facilitating farm enlargement, and there are other areas we could discuss at some other time. It will let others present.

**The Chair:** We have approximately three and a half minutes left. I'll go to the official opposition.

**Mr Tim Hudak (Erie-Lincoln):** Thank you very much, Mayor Hodgson. Folks may not know that the mayor has done an outstanding job locally in calling together stakeholders in the town of Lincoln and Niagara to present a position on the greenbelt. I appreciate the comprehensive nature that a greenbelt alone will not be successful; you need the strategies to support it.

Maybe I'll ask you to push a bit more on the municipal side in terms of how the greenbelt legislation, as structured, will bound Lincoln in, the pressures that will put on your existing tax base and suggested remedies.

**Mr Hodgson:** We already have among the highest property taxes, and we don't have the kinds of facilities that other communities have. When I say "other," I mean more urban communities and certainly communities where there is significant rapid growth going on. That isn't to say that we expect to have big city facilities. What we need to recognize, however, is that people live here. The majority of people are not farmers, they are not employed in the agricultural sector, and there is no justifiable reason that people whose towns will now be encompassed within the greenbelt area should be denied access to reasonable recreational and cultural facilities. These things are increasingly out of touch. I won't even go to the areas of buried infrastructure and roads. I think that's a problem that is common across the province.

**The Chair:** I'll go to Ms Churley.

**Ms Churley:** Thank you very much for your presentation. There's not enough time to ask reasonable questions, but I guess I would like to know what your biggest challenge is in your beautiful town right now. Are you having a lot of development applications? Is that why you're welcoming the greenbelt legislation?

**Mr Hodgson:** No, as a matter of fact. I think I would actually say we are not experiencing the kinds of pressure for development that you might read about. I read in the newspaper the other day, for example, that in Niagara we have way more severances per thousand acres than others. Our farms, particularly in Niagara, are about 25% the size of the average across the province. If you only

include the farms in the tender fruit lands, I would imagine it might be more like 10% or 15% of the size. This is some of the oldest settlement area in the country and, of course, because of the, at one time, reasonable farm incomes, fathers divided up lands for their sons. Now, just like general agriculture, what we're seeing and experiencing is the trend to enlarging the farm because of shrinking margins. To facilitate that, we see the severing of surplus farm dwellings. That doesn't create a new house, and I don't think it should be stated as a real challenge. I think it's actually just part of the adjustment process that the farm community has to use right now.

If the province would like to see the farm community go in a different direction, there are alternatives that have been proposed.

1320

**The Chair:** I'll go to the government side.

**Mr Kim Craitor (Niagara Falls):** Mr Mayor, it's a pleasure to see you again, and thank you for taking the time to come out and present on behalf of your community. I jotted down a couple of your comments, which I totally agree with, and I want the record to show it. When you said it's not just mapping, you're correct. The bill cannot just be mapping.

I just want to quickly share with you before I ask you my question—I'll do this very quickly, Mr Chair. I had the pleasure of hosting a round table here at Niagara College and about 150 fruit growers and grape growers showed up. I quickly learned that this is not the first time, as you said. This has been studied by previous governments.

I know you didn't go into all the detail you might have wanted to, but I think it's important for us on this side, so I really would like you to send to the committee some of your ideas when you use the word "sustainability." I know you talk about VQA and VQA stores, and I hear a lot from the fruit growers and the grape growers about sustainability. Can you send that information on to the committee?

The other thing I want to share with you is that it is not about one ministry. This sustainability has to be done through at least four different ministries, which I'm certainly working with. I want to share that with you. The committee's intention is to assist you in any way. So if you could do that, I'd appreciate it.

**The Chair:** Our time is up. I appreciate very much the time you have taken to come down and address the committee.

**Mr Hodgson:** Thank you very much. I'll make sure that I send some written material you.

## WINE COUNCIL OF ONTARIO

**The Chair:** The next group is the Wine Council of Ontario, Linda Franklin. Welcome to the committee. Once again, you have 20 minutes. Either you take the whole 20 minutes or you leave some time at the end for questions from the three parties.



**Ms Linda Franklin:** All right. I'll try to leave some time for questions, then. Thanks very much.

I'm the president of the Wine Council of Ontario. We appreciate this opportunity to be here in Niagara with you to talk about what we believe is a fairly crucial issue, not just for our members, but for the future of tourism, agriculture, transportation and economic growth in Niagara generally.

A little background on us: The Wine Council of Ontario has 57 members representing 62 winery properties. All of our wineries own vineyards, and winery-owned vineyards now account for almost 30% of all the wine grape vineyards grown in Niagara and southwestern Ontario. The industry itself currently accounts for over \$400 million in sales of wine, contributes upwards of \$200 million in taxes provincially and federally every year—half of what we make we give you back—and we're the driving force behind more than 750,000 tourism visits each year. In addition to that, our members add value to the economy of Ontario. We contribute \$3.88 in added economic value for every bottle of wine we sell, which compares fairly favourably to 46 cents of value-added for every imported wine sold.

Behind all these facts and figures are dedicated wine growers whose goal it is to double the Niagara acreage planted in fine wine grapes in the next 10 to 15 years. We see a future where we are very sustainable over the long term. We see a future where all of the acres that can be planted in wine grapes are. They'll be planted with fine wine grapes and they'll be entirely dedicated to the VQA, which is 100% domestic content, because that marketplace will have grown enough to sustain that over the next few years. We believe, though, that over the long term, that goal is in jeopardy because of development trends in Niagara, and we believe they're threatening the unique agricultural lands we rely on.

We know that members of this committee care about that, as does the government and, frankly, we should all care if the precious non-renewable resources that are the soil and climate of Niagara are lost, paved over and urbanized. So we come before you today in full support of the need for an agricultural preserve in Niagara and for this bill, which will help make that a reality.

We understand that there are huge pressures for development. We know that there are another 3.5 million people expected to be living in southern Ontario by the year 2035. But we also know this: Only 5% of all the land in Canada is prime agricultural land, and Ontario contains just over half of that. Much of that land is right here in Niagara, married to a climate that is not reproduced anywhere else in Ontario. We know that, in the words of the Centre for Land and Water Stewardship at the University of Guelph, southern Ontario's limited supply of agricultural land is going out of production at an alarming rate. The rate is most alarming here in Niagara, and I think the mayor referred to some facts that we've referred to before about that. Research conducted by the centre at the University of Guelph shows that on average in the 1990s—not generations ago, but in the

past decade—1.04 residential lots were created per 1,000 acres of agricultural land generally in Ontario. During that same period, agricultural land in Niagara was going out of production at more than three times that rate: 3.62 residential lots were created here for every 1,000 acres of agricultural land.

The thing about land is, as the saying goes, they're not making any more of it. So once this invaluable, irreplaceable farmland is gone, it is truly gone, and with it will go the future prospects for a key part of Ontario's agricultural base. If the current rate of development is allowed to continue, vineyard growth will stagnate and so will the booming wine and culinary tourism industry that is helping revitalize Niagara. This is a serious concern for our members, the vast majority of whom are located in the Niagara region with its unique microclimate that creates one of the few places in Canada capable of supporting a fine wine and tender fruit industry.

Instead, wars of attrition have been going on, and I guess we would differ with some of the members of councils on this. Our wineries have been fighting proposed severance and zoning changes for years. Even as they do that, though, developers are continuing to buy and hold agricultural land in Niagara, working toward the day when the current zoning will change and more agricultural land will be urbanized.

It's clear that the current policies meant to preserve agricultural land have not been effective enough, although they've certainly helped. That's why we support this legislation. What is needed is a consistent, long-term provincial approach and vision for the future. We believe this greenbelt strategy is the first step in achieving this vision, and we also believe that the work of the commission set up by the province must include specific focus on Niagara's unique situation.

We think there are four key elements of land preservation that are important from our perspective: (1) farm severances, (2) urban expansion, (3) the need for consistency in policy and (4) addressing the needs of the farm community.

First, severances: We know this is a sensitive issue in Niagara, but it is difficult, frankly, to envision any credible land preservation strategy that allows severances to continue. Although they may be small individually, severances collectively amount to death by a thousand cuts in agricultural land. Again, our view is supported by research from the University of Guelph's Centre for Land and Water Stewardship, which has done extensive work on severances. The university's research shows that the current situation in Niagara is indeed concerning. Niagara has a very high rate of severance approvals in comparison to other regions with significant agricultural land and, while the number of approved severances has certainly been decreasing over the past few years, each additional severance adds to the accumulation of agricultural land that's being withdrawn from the practice of agriculture. There are some instances, of course, where severances are about adding to farm property, but these are far and away the unusual example. The far more



normal example is that land is severed for the eventual creation of residential lots.

While the region has policies in place to acknowledge the importance of agriculture, including the classification of agricultural land in the official plan, 833 lots were still created in the 1990s, which introduced a new residential use into the agricultural land in Niagara. Of these lots, 414 were created by allowing a farmer to sever a retirement lot, and an additional 162 residential lots were created by severing a surplus dwelling from a farm. Thus, official land use policies and plans are not preventing a severance policy, although we certainly applaud the effort at the municipal and regional levels, because it has without doubt mitigated the potential scope of the problem. From 1990 to 2000, a total of 5,485 severance applications were made to the region.

**1330**

Whatever the reason for creating a severance, one fact is clear: Farm severances remove land from agricultural production the vast majority of the time, making it more difficult for farm operations to expand and increasing the potential for conflict between farm operations and residential neighbours, which is of course a big concern to us in the wine industry. Because a number of aspects of farm operations are incompatible with residential development, it's important that this interface be limited, so as to limit the potential for serious conflict when farmers are engaged in normal farming practices. The wine industry, frankly, does not believe there's a place for continued farm severances in the sensitive, unique agricultural lands of Niagara.

Our second issue is around urbanization. We know that Ontario must be further urbanized to meet the growing needs of a growing population and an expanding industrial base, as the mayor of Lincoln spoke to, but it can't go on unchecked, and it must be directed away from our primary agricultural lands toward more appropriate areas. In the Niagara region, there's a logical and appropriate direction for further urbanization: to the south. There are many communities in south Niagara that would welcome new urban development. Those communities are not home to the exceptional microclimates or unique soil conditions that make the land below the escarpment so vital to agriculture.

To help facilitate appropriate urban expansion in this area, our council believes that the mid-peninsula corridor must proceed as a critical component of the Niagara land preserve. Otherwise, pressure to widen the QEW and locate more industry and development along that corridor will be irresistible. The QEW runs through some of the peninsula's best agricultural land. Continuing development along this corridor will simply erode our best agriculture lands, while starving some of the Niagara region of the economic development potential to the south that it needs to prosper.

Third in our issue list is consistency. We need consistent rules and practices throughout the Niagara region. Right now, each municipality has its own set of rules and regulations regarding wineries, and it's resulted

in a patchwork that is both inefficient and unfair. The issue of consistency is highlighted by the Niagara Escarpment Commission plan area.

Two years ago, the NEC held hearings on the wine industry as part of its five-year review. Its report provided many positive recommendations but also produced many troubling conclusions that differ from the way that municipalities currently manage the wine industry and that result in damage to the health and potential of the industry. We think the issues raised by the NEC report should be considered as part of these land preserve discussions and that we should end up, at the end of the process, with one set of clear, consistent rules that apply to our industry right across the province.

Finally, we agree that the needs of the farming community have to be addressed in this discussion. All of our members are farmers. They all have the same concerns the farming community does about viability, profitability and so forth. In any area where a decision has been taken to preserve agricultural land for the future, the concerns of farmers who own the land are appropriately addressed, as they must be.

In many parts of the United States, compensation issues have been addressed through the establishment of land trusts, an idea that's been carefully explored by the Ontario land preservation trust, headed by Dr Stewart Hilt. Clearly, if Niagara's tender fruit land is to be preserved in the future, as it must be, then some system of compensation must also be established. The land trust model, we believe, is a good starting place to look for inspiration.

In addition, to keep farmers on the land, the government should find ways to create a more level playing field for the farm community than currently exists. In the United States, as well as in Europe, government programs and subsidies help the farm community cover the cost of many initiatives, including critical research, irrigation, export programs and replanting requirements, to name just a few. This gives farmers from countries that compete with Canada a decided advantage.

Recently, the announcement of a federally funded, multi-year strategy to eradicate plum pox will make it far easier to manage this serious threat effectively and keep our farmers competitive. We believe that's an important initiative and the kind of thing that should be looked at in this context.

A more comprehensive approach to addressing the needs of the farm community and lands under the green-belt strategy should include a careful review of areas such as research and irrigation that should be subject to government support to maintain our competitiveness and ensure farm viability.

We believe as well, frankly—the wine industry has a 20-year strategic plan. If that strategic plan is successful—and the first two years have been very successful—we believe that we can produce long-term, sustainable growth in Niagara and on these lands. One of our members is fond of saying that when a wine region takes off, it begins to become the most expensive land on the



planet. That's certainly true in Burgundy, it's true in Bordeaux, it's true in Tuscany. There are many places in the world we can look to where, once agriculture related to winemaking takes off, once the wine gains credibility and clout in the marketplace, then profitability comes with it.

We think our strategic vision will achieve this. We don't want to plant more low-priced grapes to go into low-priced blended wines. We want the few acres of agricultural land we have here to be turned over to the production of high-priced premium grapes for our highest-priced, most premium VQA wines. That's a vision we believe will support sustainability in the long term. We think an agricultural subcommittee or task force on the greenbelt process should be put together to develop specific proposals to bring forward in this regard.

In closing, I want to leave this thought with the committee. We in Ontario are behind the times when it comes to preserving vital agricultural land. It's already been done in British Columbia; it's been done in the Napa Valley. In BC, the agricultural land preserve has been in place for more than 25 years, and it's been successful in slowing the rate of farmland loss without ruining the economy. Likewise in Napa, the land preserve has ensured the preservation of vineyards and land for vineyards. The result is that land has skyrocketed in value, eliminating the need for concern that it might be more valuable to developers. Other communities in California are following in Napa's footsteps, creating their own preserves; most recently the Lodi region.

The land preservation strategy we need to adopt should certainly be unique to our own realities. But, make no mistake, we need to adopt one now. There are many examples before us of communities that have done this successfully.

The Ontario grape and wine industry is healthy today. We are optimistic about the future, and we will remain optimistic if we can work together to make the right decisions about preserving the tender fruit lands in Niagara. We absolutely believe this is a priority. This can only be done by immediate and decisive action. We agree that there are many stakeholders who need to be consulted. We think they all should be consulted and should be part of the process, but at the end of the day we would urge you to work together to implement a clear and unequivocal plan to preserve our unique agricultural lands. It won't be easy, but it's worth being done.

**The Chair:** We have three and a half minutes left. I'm going to go to Ms Churley.

**Ms Churley:** Nice to see you again.

**Ms Franklin:** You too.

**Ms Churley:** That's a very informative brief. Thank you very much. I wanted to ask you to elaborate a little bit on your comment about the NEC hearings and how some of the results of those hearings impacted negatively on your industry.

**Ms Franklin:** Sure. The report hasn't been acted on yet, so we're still hopeful of change. One of the things

we're concerned about is that the NEC took a view of the wine industry that looks back about 200 years. It looked to an industry where there would be a lot of hand-picking of grapes by people walking through small parcels of vineyards. As a result of that vision, they made a series of recommendations.

The hearing officer suggested that there shouldn't be any further restaurants at wineries. Frankly, although we don't think there are going to be thousands of those, at the end of the day those restaurants are driving regional cuisine movements, tourism movements, all sorts of things that are adding, we think, to the viability of that land base. So we think that needs to be looked at.

They suggested an absolute cap on the size of wineries that was fairly small. Our suggestion is simply to look at the acreage we're sitting on. If you sit on 100 acres of land and you need to bring in the grapes from those 100 acres, probably you're going to have size issues, because if you're making fine wine, you need space to store barrels.

We think in general there were a lot of issues that simply weren't fully discussed and debated by the NEC. Their recommendations fight with municipal bylaws in Niagara-on-the-Lake, in the town of Lincoln, all looking at different sizes for winery properties. We think we just need to take a look at the whole thing together.

**The Chair:** To the government side.

**Mr Wayne Arthurs (Pickering-Ajax-Uxbridge):** I've got a question with regard to the value being put into the system, into the economic activity, at almost \$4 a bottle compared to 46 cents. In many areas I hear that agricultural sustainability is such that there is not enough money in the business to stay in agriculture. It appears here that this is the viable approach. Could I have some quick explanation on the extensive value of the Ontario wine industry compared to imports?

**Ms Franklin:** Sure. That was based on a study commissioned by the Wine Council of Ontario, done by KPMG a couple of years ago. What it found, I think, is fairly straightforward. Because the Ontario wine industry largely sources from Ontario and employs Ontarians, those Ontarians buy houses and cars, pay personal income tax, pay business taxes. When you look at all of those things together, that produces that effect per bottle. I think you're right that agriculture in some areas isn't quite so profitable and it is difficult. Certainly there are challenges in the wine industry as well, as both wineries and growers would argue. But our great sense of optimism, I think, is that consumers in Ontario are buying more Ontario wine, better Ontario wine, and the more we move up the value chain—the more consumers are buying \$12 bottles of our wine rather than \$10 bottles—the more profitable the whole chain becomes.

1340

**The Chair:** Mr Hudak.

**Mr Hudak:** Thank you very much, Linda, for an excellent presentation.

One of the points I want to zero in on, and we'll hear this theme over and over again today: If we want to



preserve the farmland, we need to preserve the farmer, which is a piece that's currently missing. Hopefully we'll see that develop at the same pace as the legislation. Can you get into some specifics of what kinds of supports are needed for the grape industry or for agriculture as a whole: VQA stores, shelf space at the LCBO, marketing programs?

Second, in terms of the definition of what is agricultural use: I think Vincor is going through some problems right now for a crush facility that's in an operation described as commercial. It's in support of Le Clos Jordan in Lincoln—maybe I've got it a little bit wrong. What I worry about is that something could be defined as industrial/commercial use when in fact it's there to support agriculture.

**Ms Franklin:** Right. I don't know much about the details of the Le Clos Jordan project, but it certainly was one of the issues in the NEC review as well. At the end of the day, if you're producing wine on a piece of property, then the crush pads, the tanks—all the things that go together to actually crush the grapes and produce the wine—are ancillary to the agricultural activity on-site. I think you're right that that's something that clearly has to be looked at. At the end of the day you can't bring in grapes at harvest and then truck them off 50 miles to a production plant somewhere. Those things have to be looked at as ancillary to agriculture, absolutely.

In terms of your second question about support to the farming community, again, we're all entrepreneurs in the wine industry, so we would argue that a good part of the answer to your question is that we need to take our destiny in our own hands. We need to produce higher-quality grapes. We need to produce more expensive wines, more premium-level. We need to manage the marketplace as effectively as we can.

But we're living in a world where the reality is that our foreign competitors are extremely highly subsidized: \$6 billion in the EU goes to subsidization of the wine and grape industry. That goes into all sorts of projects, from marketing money to export to Ontario, the single biggest export destination for foreign wines on the planet. It goes into irrigation projects; it goes into distilling projects so there are no surplus grapes.

The United States has just enacted, as you know, a farm bill that has vastly expanded the amount of subsidy, even in the face of free trade agreements with our country that, again, produces money for irrigation, for research projects.

We're facing an issue, as you folks know, around the ladybug right now, and we are struggling mightily with government to find some sources of funding to help with that research, whereas in California, facing a problem with a beast called a glassy-winged sharpshooter, state and federal governments can't throw money at this issue fast enough because they recognize the value of the industry and the need to support research that preserves it and moves it forward.

**The Chair:** Our time is up. Thank you very much for coming. We appreciate your presentation.

## GRAPE GROWERS OF ONTARIO ONTARIO TENDER FRUIT PRODUCERS MARKETING BOARD

**The Chair:** The next presenter will be the Grape Growers of Ontario. Welcome, Ms Zimmerman. As you are probably aware, you've got 20 minutes and you may leave some time for questions. I would like to ask at the present time if we could be brief in our questions and answers because of the time.

**Ms Debbie Zimmerman:** Mr Chairman, I would like to share my time with the Ontario tender fruit board. Mr Len Troup, the chairman, is here. I'll take the first 10 minutes and allow him the second 10 minutes if that's all right with the board.

**Mr Hudak:** I appreciate that you're willing to share time. I think it would be important to hear from both of you in the full 20 minutes. If we have the indulgence of the committee members, maybe we can get a full presentation from Mr Troup. They have some issues that are the same and some that are different, Chair. So if the committee will indulge the presenters, it would be nice to have them both. As opposed to having Debbie split her time, it would be nice to have the grape growers do a full 20, and if Len wants to do his full 20, let him do that as well.

**The Chair:** We won't be able to accept that, because we are scheduled pretty tightly today.

**Ms Zimmerman:** Mr Chairman, I'd be quite happy to share my time, and I appreciate the member's consideration, because it is important to hear from both organizations.

**Ms Churley:** How about talking faster?

**Ms Zimmerman:** I'm going to give that a try, Marilyn.

**The Chair:** We have both copies.

**Ms Zimmerman:** I don't want to lose my time to debate, so I'm going to get started.

First of all, members of the standing committee, I do appreciate this opportunity. My name is Debbie Zimmerman. I am the CEO for the Grape Growers of Ontario. Attached to this letter is a copy of the presentation of the Grape Growers of Ontario to the Greenbelt Task Force on March 19, 2004. This brief reflects the culmination of growers' interests generated from a number of consultation meetings, and in particular a town hall meeting that was hosted by Kim Craiton, the MPP for Niagara Falls.

We encourage members of the standing committee to read carefully not only this attached submission but also the work of the region of Niagara's agricultural task force, which has been in progress for over two years. The work of that task force includes all agricultural commodity groups across the region of Niagara. They have put together a very comprehensive position paper which is in fact referred to in the Greenbelt Task Force discussion paper, which I understand has just been posted on the Web.

Vineyard country is a major contributor to the quality of life of many Ontarians, preserving thousands of acres



of land from urban encroachment. The Grape Growers of Ontario represent 17,000 acres and 13 million grapevines. The land stewardship will require tools to support the viability of the grower and the protection of the land. I'm just going to elaborate very briefly on these tools, which are included in the brief.

The right-to-farm legislation is one of the very important tools that recognizes the grower or the ability of the farmer to farm in any given area. I think one of the important things that has been mentioned over and over again—and I'm sure you're going to have it as the basis of your discussion today—is to save the land, you must first ensure the value and the viability of the farmer. That is critical to any discussions for the future.

Infrastructure has been mentioned. One of the things that is important to the growers in Niagara and across Ontario is irrigation and such issues as the mid-peninsula corridor. Just as Ms Franklin has recommended that wineries need to be viable by adding value-adds such as restaurants to wineries, growers also need these particular tools in terms of infrastructure and other things to contain and ensure that they are viable for the future.

Assessment policies, referring to MPAC currently and with the previous government: Many of those policies were detrimental and do not support a value-add on a farm.

Buy Ontario first: A lot has been mentioned about the quality and the opportunity for quality to be built into any of these lands or any of the growers' lands. But we need to ensure that the LCBO recognizes that buying and putting Ontario first on the shelf is critical. Today, you will not find one LCBO store across Ontario that has any more than 50% of VQA shelf space. In fact, I think you would struggle to find any more than 25%. One of the most important things we see for growing quality in our industry is to ensure there is a market for Ontario product. As has been referred to, the economic output of a domestic bottle of wine is about \$3.88, compared to 46 cents from an imported bottle of wine. This needs to be considered as well. Research, marketing and promotion are also critical to the support of any opportunity for farmers in the future.

Surplus dwelling severances as a value-add to the farm is something that also needs to be taken into consideration. The same study conducted by the University of Guelph on severance activity and released in 2002 concluded some of the following things:

—Severances have, overall, declined over a 10-year period and severance policies have become much more restrictive.

—Surplus dwelling severances were not significant, as they did not create any new lots.

All of these particular issues are included in the brief that is before you today. I will ask my colleague from the tender fruit producers to take the rest of the time.

**Mr Craitor:** My colleague on the other side made a good suggestion, but I know our time is tight. I wonder if we could just maybe, with the indulgence of the committee, give them an additional 10 minutes of time so we

can ensure that you have enough time for some questions. That would be a happy medium. I'd like to make that motion.

**The Chair:** She's only taken six minutes at the present time, so if he takes another nine minutes—

**Mr Craitor:** Just in case.

**Mr Hudak:** These are two very important presentations.

**Ms Zimmerman:** We're losing our time.

**Mr Craitor:** Why don't we just do that? If they don't need it, that would be fine.

**The Chair:** I'm telling you, at the end, some of us have to take a plane. We're scheduled until 5 and if we—

**Mr Craitor:** I'll leave it to your discretion.

1350

**The Chair:** We'll keep going. If you want to make a presentation, you have time

**Mr Len Troup:** I'm sorry I'm such a nuisance. Apparently there was no room for us, and then Debbie very graciously allowed me to share her time. I do appreciate that. I will be very brief in my presentation. It's there for you to read.

I must make one observation. I find it very interesting that in the next 20 years all the available land is going to be planted to grapes. I find that a little surprising, because we have 13,000 acres of tender fruit that is doing just fine. I don't know; I'm trying to figure out what all this means. I guess 20 years from now, we'll all know. The tender fruit business is there. We've been here for 100 or more years. I wouldn't be surprised if we're here for another 100, in spite of some of these dire predictions.

In my presentation there are points made later, but I really would like to highlight three things that basically everyone is going to talk about anyway. We endorse these things.

In the interest of brevity, the first one is that the Niagara region has their task force, which produced a paper, *Securing a Legacy for Niagara's Agricultural Land—A Vision from One Voice*. A lot of really good thinking and a lot of work went into that. We endorse that completely. I believe it will be dealt with by a regional representative later in the afternoon, so I'll let that one go.

Second, the Greenbelt Task Force was not mandated to consider the viability of farmlands to be included in the greenbelt. I understand that in the paper that has just come out it has been accepted as being necessary to deal with viability. We also recommend that an agricultural subcommittee be established to develop recommendations on actions required to ensure that farmers are viable. I can go into a whole list of things on that. We just want that subcommittee to deal with the issue. We don't want to deal with it after the fact. After the fact is unacceptable because we'll get nothing after the fact, and we all know that. These things have to work in tandem, as the previous speaker said.

Third, crops produced in Niagara are unique to Niagara. Many cannot be produced successfully any-

where else in Ontario. Our orchards and vineyards are major tourist attractions and complement our fruit markets, pick-your-own operations and wineries. Our board strongly recommends that Niagara, and especially the unique tender fruit lands, be considered separately from the other areas to be included in the proposed greenbelt. I believe that is also a recommendation in this—I just got it this morning, but some of our major concerns are recommended here. That absolutely has to be done. Niagara is not the rest of Ontario, and we cannot be considered in the same way. Our problems are unique; our situation is unique. Everything is different here.

We're quite prepared to work with any group to work this thing out. Our board is on record as supporting the greenbelt proposal. This is a motherhood concept. I don't think anybody can be against the concept. It's how it gets done that is absolutely critical. It can be done the right way, or it can be a total disaster. I really appreciate your having this hearing so you understand that even though there is a short time frame, theoretically, in getting this put in place, it is such a vital thing. Make sure enough time is taken to get it right the first time, or it won't work. If the farmers aren't on side, I don't care what the legislation says; it will not work.

**The Chair:** We'll go to the government side. Who has a question?

**Mrs Maria Van Bommel (Lambton-Kent-Middlesex):** I'd like to speak a bit to the issue of severances and the severing of surplus buildings. I take it from this presentation that you have no objection to the severing of surplus buildings?

**Ms Zimmerman:** Surplus dwellings, we feel, add value to the farm. I can give you a couple of examples of that, particularly in the area of Niagara-on-the-Lake. Everybody knows that quite often the first severance, the first acre, is the most valuable acre. After that there is a continuing decline.

Niagara does not have large farm parcels. The average size, I think, is about 69 acres. But when you need to grow your operation, quite often it comes with a dwelling. To be able to sever that dwelling may make the difference between whether or not you can actually afford to add that acreage to your existing operation. The difference is, that is an already existing house. Essentially, you're not creating a new lot. You're just putting an imaginary line there to say that exists, and you add to your farm operation.

**Mrs Van Bommel:** But the person who is then living in this new severed lot—it still is a severed lot; it is a new lot. Earlier, someone mentioned the types of conflicts that go on between people who move into these severed homes and the farming operation that goes on around them. Would you not be concerned that people who move into these homes might have objections to the operation of the farms right around them?

**Ms Zimmerman:** I think why we call it has to be value added to the farm—we think the agricultural sub-committee, which is being recommended through the task force, needs to define "value added." In a lot of

cases there are generational farms and farm families. In some cases it may mean an opportunity for one member of the family to be part of the farming operation. I think this is what both Mayor Hodgson and Mr Troup have referred to.

You have to be very forward thinking. This greenbelt isn't just for today. We're not only trying to ensure the land is going to be there but the viability of the farm, which often includes a farm family. In Niagara, farm families are still an important part of our economy. We're not yet into large manufacturing farms. Essentially, we still have farm families running the farm.

In many cases there are sons and daughters moving in to take over these farms, and it is necessary, in some cases, to have that home. Adding certain operations—maybe I'm not making this clear; I see the consternation on your face. Maybe Len can synthesize this into a simpler response.

**The Chair:** I have to go to Mr Hudak. I'll come back to you after.

**Ms Zimmerman:** He has the same question.

**Mr Hudak:** I'll be quick. Thank you both. Thanks, Mr Craitor, for trying to give more time too.

Debbie, talk about market access for the grape industry, the VQA stores and the LCBO a bit more.

Len, please finish your answer. Then I want you to talk about the Beaubien report and the supports for agriculture, trade pitting, etc.

**Mr Troup:** I have to use myself as an example, because nobody seems to understand the consequences regarding these surplus dwelling severances. I am part of a farm family. Technically we are a corporation—you know those terrible monsters out there? We're actually a farm family that operates as a corporation, as most businesses do.

I've been farming for over 40 years, so don't ask me how old I am. In the process of doing that, we have purchased 10 farms. Every one of those farms had a house. In most cases the owner continued to live there. If they were adjacent to us, there were varied ways of doing it. Some of them have been surplus, and we've allowed the owner to keep it, live there, sell it off, whatever. Two of those surplus homes are now owned by family members who actively participate in the farm. Our farm owns no houses. The business is the business; the house is the house. Believe me, it's the only way to do it. You don't want General Motors owning the homes of all their employees; it's not going to work. It's a good business practice.

It's the only way the farming community can accumulate land, because it's already fragmented. It's already out there. If we're going to have viable larger operations, which we must have in today's society to supply the market in the way the market wants to be supplied, we need that tool. We're not building new houses. There's somebody living in that house anyway.

We have neighbours all over the place. We farm more than 25 different small parcels, which were 25 different farms at one point in time. Between owning and renting,



we farm all those parcels. Many of them have been assembled, and there are houses still there. We get along with all the neighbours, but we have the land base.

If the farmer cannot own the land base, he cannot make long-term plans. This isn't grains and oil seeds; this isn't a cash crop. This is something where you need at least a 10-year plan and you should have 20. If you don't own it, you're not going anywhere.

1400

**The Chair:** We have two minutes left. Ms Churley.

**Ms Churley:** Thank you very much for your presentation. It was very helpful. I would like to understand a little bit more. Severances seem to be the theme here, and I think I have a better understanding now of what you mean.

Given the legislation before us today—as you know, this is just the framework legislation and the real work begins after that—what is your opinion of how this legislation should be structured so that future severances can be stopped? Is there anything you can see about doing some of the—I'm not talking about what you're referring to as value added to the farm, but the overall severances. What do you want to see happen to stop them, and can some of the land that's already been bought up be reclaimed?

**Ms Zimmerman:** I'm going to date myself here. I was involved in 1989 when your government presented the concept of an agricultural easement program—Len can refer to that, because he was part of it. The concept was well received. However, it didn't move forward because there was a change of government. There is still some opportunity to review and look at farm agricultural easements—call them what you want—as opportunities.

I think the main message I'd like to leave with you today is about the viability of the farmer on the land, which must come first. I think it's been stressed over and over: Don't refer to this as just a land use exercise. You have to remember that these are farm families. We are not talking corporations; we are talking corporations in the definition of families. In fact, you could displace and eliminate, for the sake of achieving what we think is already being achieved here in Niagara, with opportunities through farm stewardships by preserving these lands. You have to ensure the viability first. Whether we refer to them as easements, which may be the alternative to severances in terms of the opportunity for the future, farm families don't have the same luxuries as we do with government pension plans or other opportunities. Their only option is a retirement severance. Niagara-on-the-Lake probably has one of the most restrictive policies based on age and years of farming. So there may be other ways in which to craft the same opportunity, whether it be through a land easement program.

**The Chair:** I'd just like to say that if Mr Troup would like to make a presentation in Toronto or Aurora, there is probably some time available. All you have to do is contact the secretary's office.

**Mr Troup:** I'll take it under consideration.

**The Chair:** Thank you very much for your presentation.

## FLOWERS CANADA (ONTARIO) INC

**The Chair:** The next presenter is Flowers Canada, Dr Irwin Smith. Thank you very much for taking the time to come. As you know, you have 20 minutes. You can take the whole time or leave time for a question period at the end.

**Dr Irwin Smith:** Thank you, Mr Chairman and members of the committee, for giving us time to speak here today. We're in partnership with many of our other agricultural commodity partners, and I'm not going to reiterate a lot of what they've said. We believe in many of the same principles, and the success of the individual farmer is obviously key to the whole thing.

The floriculture industry is a somewhat unique industry, but it is an integral part of horticulture and the horticultural package which occurs on many farms. It's a key component of the greenbelt study area and as such should be included in any consultations and any new act. We have been concerned that until now there has been no opportunity to make input, and we're very glad that this opportunity has happened today, albeit at very short notice.

The growing of flowers in greenhouses is recognized as an agricultural practice in many statutes within the federal and provincial governments. This is a conception I really want to clear up, because it comes up time and again in planning, rate and tax issues. Greenhouse farming is agriculture, no matter what way you look at it. The soil is just as important to somebody in a greenhouse who grows chrysanthemums as cut flowers in the soil as it is to anybody else who needs the soil to grow a crop. We do have other practices in greenhouses where crops are not grown in the immediate soil but in a medium like peat. But in terms of laws with respect to labour and many other laws which exist, it is all part of agriculture.

In most cases, you will find that a floricultural enterprise is part and parcel of a diverse agricultural business, including the growing of grapes, fruit trees, vegetables and ornamental and nursery crops. I would just add that the ornamental and nursery representatives did not hear about your hearing or have not heard about it yet. Tony DiGiovanni sends his apologies, but I think they will be interacting with you at a later date. We often stand together with them as an ornamental and nursery industry.

Horticultural producers use the diversity of different crop production practices as a risk management tool in their agricultural businesses. They construct greenhouses as a risk management tool as well. It's a considerable investment in taking out the climate factor and being able to do that by investing in computers, heating systems and that kind of stuff. So really it's a risk investment.

I'd like to reiterate that farmers make production decisions based on market forces, no more so than in the horticultural sector which exists here in the Niagara region and in the greenbelt area. Farmers are good stewards of the land—it's their livelihood—and they make these decisions based on different forces that exist.



So being able to change from one horticultural crop to another is part of the business, and they will have a diversity of crops so they are managing risk with respect to changes in climate and market conditions.

The floriculture industry itself is made up of many components, all of which are successful businesses employing large numbers of people, generating wealth and paying taxes. It is a free enterprise business almost to the nth degree. There are no marketing boards which control the marketing of crops or pricing. There is free enterprise and free competition, not only here but across the border with the United States.

In the Niagara region alone, the regional impact study reports that 42% of agricultural income is generated by the greenhouse industry. Since about 90% of that is flowers in this particular region, nearly 42% of agricultural income is generated from floriculture. This amounts to some \$250 million worth of income, produced by 265 producers in the Niagara region on 420 acres of land. So we have very efficient use of land, generating a large amount of farm gate and employing a lot of people. This represents about 30% of the gross farm receipts in Ontario being generated in the Niagara region by the greenhouse industry. It doesn't take into account what's happening in Leamington and other areas. This is the most important area for floriculture crops.

We would estimate that the number of employees in the industry in the greenbelt area is about 10,000. Greenhouses result in stable communities. You can't move them around. They have great employment opportunities for people of all ages, and they are usually close to home. They can work very flexible hours if they have children and need to attend to them at different times. Many are retired people working in greenhouses at hours which they can easily afford.

The greenhouse industry is a global business. There is product moving around the world at a rapid rate in all directions, and that is exactly true for this area here. It is becoming part of a huge global business, and this region is extremely important in that global concept. We often move crops backwards and forwards two to three times across borders before they are eventually sold to the consumer.

**1410**

The Niagara region impact study has reported that Ontario is North America's third-largest greenhouse floriculture producer, behind California and Florida. That is a huge amount of business being carried out.

We would submit that in the Golden Horseshoe, good regional planning has resulted in well-planned and maintained horticultural farming operations with minimal risk to the environment. We applaud good regional planning and would like to be part of it, and have been, in the different towns and cities in the region.

Greenhouse operations use water highly efficiently, and recycle waste water by using recycling systems. All modern systems have zero runoff; in other words, no water leaves the property. Anything that is used to water crops which is not taken up by plants is captured and

reused in the system. In such systems, the water use per square foot may be lower than that of an average household. I think it is wrong to claim that greenhouses are using up a lot of water and wasting it.

We are currently challenged by high energy costs—a 30% increase in the last three years—and the exchange rate, since 70% of our production is exported. At the same time, we import 70% of the cut flower requirement of this country, again indicating the huge global trade that is occurring in the floriculture industry and what goes with it.

We're concerned that there isn't the proper infrastructure in place related to moving product more efficiently, especially at the border, where we're extremely challenged. We send about 200 trucks a day over the border, worth \$20,000 each. That's about \$4 million of product a day moving back and forth across the border. We don't have a product that has any shelf life. If it doesn't reach its market that day, if it's stopped at the US border for any time and for whatever reason, we cannot resell that product or remarket it. If the truck comes home, that's a loss. We are working very diligently with our US counterparts to put things in place so that there are not plant health issues that prevent our products moving across the border in different directions. In fact, we had a meeting yesterday at the consulate in Buffalo with US officials, which we are doing on a regular basis.

Integrated pest management systems have minimized the use of pesticides. There are very minor amounts of pesticides used in our industry, and biological control where bugs eat bugs is the general way of life in a greenhouse.

Why are we concerned about the process being used to develop a greenbelt policy? I appreciate the opportunity to speak with you today; this is the first occasion we have had to participate. We are concerned that outsiders are making recommendations and decisions on behalf of the greenhouse farmers in the region. We request that agriculture—in particular, floriculture—be part of those discussions.

We're concerned about restrictions being placed on greenhouse construction and the planning issues around greenhouses without consultation. We are not against, but support, good planning. But we ask that we be part of the planning process. There is, and will be, further urban conflict with agriculture, such that agriculture will always be challenged by urban sprawl, but it can be managed if it is done properly, with proper consultation. Regional planners must understand agriculture's needs and that agricultural development is just as necessary as urban and environmental use development.

Agricultural operations can't be burdened with high industry planning and development taxes or they'll soon be going out of business and we'll be losing jobs. We find we are diverting more and more resources to dealing with government. There are operations that require almost full-time employees simply to deal with different inspections that take place on a daily basis: looking at records etc.



Too often we find ourselves responding to changes in planning and taxes at the town level—for example in Milton, where we had to defend one of our members, and again in Lincoln and in different places—without there being coordination at the central government. We would like to see some of that better coordinated.

That's all I have to say. We will be making a written submission at a later date; we will not be putting it in today. I thank you for your time and for listening to us. I would extend an open welcome to any of you who would like to visit some of our operations to make arrangements with me, and I would be happy to take you around.

**The Chair:** Thank you. We have nine minutes left. I'll go to Mr Hudak first.

**Mr Hudak:** Thank you very much for the presentation, and we look forward to the detailed written presentation. Hopefully other members of the industry will be able to present at other dates. Initially, the hearings weren't coming to Niagara, and I'm pleased that they finally have worked out and a number of Niagara stakeholders are here.

The item I worry about with respect to the greenhouse industry is how it is defined as an industry and how that may change down the road. This bill, if passed, gives the minister the authority to basically define what uses are allowed outside of the urban boundaries. He can potentially decide if a greenhouse fits with the current definition of non-agricultural, commercial or industrial. Are you satisfied right now that under MPAC, or definitions of the Planning Act, the greenhouse industry, which I see as agriculture, is protected and defined as agriculture, so it doesn't find itself put in an industrial category and therefore ineligible to grow in Niagara?

**Dr Smith:** I think there's always a danger of being put in that category, and that concerns us greatly. I'm happy to give a document to this committee that outlines many legal cases where challenges have been made against the greenhouse industry as being agriculture. I'll be happy to share that with you. We will always argue that greenhouse culture is agriculture.

**Mr Hudak:** If you could, please get that to the clerk and she can share it with me.

**Dr Smith:** I have a copy with me now. I'll leave it with you today.

**Mr Hudak:** The other thing that I find troubling about the bill is the amount of power that goes to the Ministry of Municipal Affairs in his office, in terms of the definitions. The minister could amend the urban boundaries. The minister could help determine whether something is agricultural or not. What degree of comfort does Flowers Canada have with ministerial power versus local councils that would administer definitions? Where do you think the balance of power should lie?

**Dr Smith:** I think that when the Niagara regional task force was created to look at the economic impact of agriculture, the discussion came up: How do we define agriculture? After that report was written, there was a subsequent committee, which I think may still be functioning, set up by the Niagara region risk assessment

committee. I believe that committee has been struggling with, again, what is the definition of agriculture? I don't think that's sorted out yet. We are extremely concerned about it, and we need the definition to be written the right way.

I agree with the mayor of Lincoln that, at that level, they have done a great job in representing the issues on the table. I think Lincoln, above all, has probably struggled more with the greenhouse industry issues, but good representation and good consultation have always taken place, which has led us to the industry today and the success that it is, and in a well-managed way. Greenhouses are well spaced, they are well planned; everything about them is good. Very different from Leamington—I'm not here to make those comparisons, but if you've been to Leamington, you'll see what it's like, with wall-to-wall greenhouses.

**The Chair:** Ms Churley.

**Ms Churley:** Thank you for your presentation today. I recognize, as we all do, it's very short notice and difficult for some to be prepared today. But your presentation was informative. I understand you are saying that you support moving forward with some kind of legislation that protects agricultural and environmentally sensitive land, but that your concerns are around what your role is in the greenhouse business or how you're defined within any legislation coming out. As well, you're concern, as I understand, about some of the other issue raised around severances and the loss of agricultural land. Would that be a fair assessment of what you just said?

**Dr Smith:** I think we support all the other agricultural groups in their thinking. As I said to you, many of my members are also members of the grape industry. There are members of the tender fruit board. They all have diverse operations, growing many agricultural crops, and a greenhouse is one of those.

**Ms Churley:** So you would support moving forward with the legislation. You would want to make sure that you're consulted and your industry is consulted.

**Dr Smith:** Absolutely. I think that's an absolute requirement.

**Ms Churley:** OK. Thank you.

**The Chair:** The government side.

**Mr Bob Delaney (Mississauga West):** I'd like to thank you very much for an interesting and informative description of the greenhouse business. I've got two brief questions, more in the realm of clarification, I think, of some of the points that you've made.

You were talking earlier about the flower business, and for my own interest you talked about flowers crossing borders and the business of importing as well as exporting them. Can you give me an idea, using the old 80-20 rule, what 20% of your product—local domestic product here in Ontario or Niagara—makes up 80% of exports and, conversely, what type of flower would make up around 80% of our imports?

1420

**Dr Smith:** I'm not exactly clear on what you're asking me. It's a very diverse industry. We grow something



like 350 different crops. It's very diverse. On the cut flower side you could say that roses, Ulster Mary, gerberas and snapdragons constitute the major crops. When you go to the pot plant industry, it's huge. Your two main ones are poinsettias and chrysanthemums. But around that there are another 250 different varieties and types of crops being grown, and if you come down to cultivars, there are thousands. It's a very fast moving, dynamic industry. The breeding situation in the world is so dynamic that there are new crops being developed and patented literally by the minute. We pay royalties on everything we propagate. On every cutting you put in a pot, you're paying a royalty to the breeder.

**Mr Delaney:** You've actually answered the question. I was just wondering if there were any trends or clusters that would define a rule of thumb. What other areas in Ontario support a viable greenhouse industry?

**Dr Smith:** Leamington is the major one. You will find floriculture greenhouses spread out all the way through the greenbelt. There's quite a bit around Kitchener-Waterloo, even heading up north of Guelph, but the major areas are this region and the Leamington region. It just happens that the Leamington area has many developed in vegetable crops, and they're centred around tomatoes and cucumbers. There are still quite a few big flower growers there too. It's mainly the climate. The uniqueness of the climate is just as important to greenhouse people as it is to anybody else. That's why they're situated where they are.

**The Chair:** We still have about 40 seconds.

**Mrs Van Bommel:** You mentioned when you started out that you felt you hadn't been engaged. I was just going to tell you that the Ministry of Municipal Affairs will be doing public meetings and stakeholder meetings. One of them is here in St Catharines on June 10. We are trying to hear from everyone and give everyone the opportunity to participate in this discussion, because we do understand that this legislation has a significant impact on this area.

**Dr Smith:** Thanks very much for that. We have seen the list of the meetings, and we will be making representations as well.

**The Chair:** Thank you very much, Mr Smith.

#### CLEAR THE AIR COALITION

**The Chair:** The next group is the Clear the Air Coalition, Mr Rob Burton. Thank you for taking the time to address the committee on this very important issue on the greenbelt. You have 20 minutes, of which you may leave some time at the end for questions.

**Mr Rob Burton:** Thank you, Chairman Lalonde. I appreciate the opportunity.

Clear the Air Coalition started in 1999. Since then, we negotiated environmental controls on the proposed Winston Churchill Boulevard fossil-fuelled electricity generating station now expected to be operational in 2007, right next door to a residential neighbourhood.

We worked to control growth in Oakville by participating in the official plan amendment 198 process for north Oakville. We appealed that amendment to the Ontario Municipal Board and led the negotiations that produced the settlement of that policy hearing in 2003. We created the Citizens' Environmental Advisory Committee in Oakville to compensate for the town's refusal to have one. That committee has already produced A Greenprint for Oakville, a draft environmental strategic plan. Perhaps the title will be a touch more meaningful to you if I tell you that the town of Oakville is busy conducting its massive urban expansion under the title A Blueprint for Oakville. I think that nicely captures the state of denial that the town of Oakville's power structure is in about the deadly air pollution we suffer and their lack of regard for green space. Yesterday was the first smog day of the year, a month earlier than last year, and Oakville was the worst.

We also provide advice and support for other community groups dealing with lakeside algae infestations from overburdening Lake Ontario with phosphorous from uncontrolled growth and inadequate sewage treatment, as well as concerns about noise pollution and other consequences of poor planning.

We are about to become involved in the last dirty secret of what passes for urban planning in Ontario, the fact that all of it proceeds without an iota of concern for where we're going to put out the trash.

Everywhere we look, our members have discovered reasons for dismay and action. That's why we're here today. Every issue that has drawn us in has increased our concern that the public good is insufficiently considered in urban growth plans. In fact, we shake our heads and ask, "Why do they call it planning?"

CTAC was created as a coalition of 10 ratepayer or residents' groups in Oakville and Mississauga in 1999. We were and are concerned that our area now has an air of death created by our congestion and bad planning. Our region's medical officers of health have confirmed the Ontario Medical Association's estimates of the death toll from the burden of air pollution. In Halton, which is where Oakville is located, it is 55 unnecessary or premature deaths a year. Asthma is now a childhood epidemic. Nevertheless, our developers and the politicians they fund to front for them continue in denial and hope to outlast our efforts to bring them under control.

Instead, I'm delighted to tell you we have grown stronger, and I believe we will continue to do so. Our many thousands of residents helped change the political colour of our area's two provincial ridings from blue to red in the last provincial election. In Mississauga South, our members helped replace Margaret Marland, who everyone said could never be defeated, with Tim Peterson by a tiny margin of 250 votes. In Oakville, Kevin Flynn won 23,000 to 19,000 after a long and respected career as sometimes the lone municipal politician standing up to the majority on Oakville's council that the Globe and Mail described as "Ann Mulvale and her sprawl-happy council."



A few weeks later, I came close to unseating Oakville's mayor with a margin of 6 or 12 or 15 or maybe 29 votes, depending on which day you count them. Next time, at the rate we're going, the election will be over whether we have to control growth better, and the answer will be overwhelmingly "yes."

Voter concern has not been temporary on this issue. Voter concern changed the provincial government, and voter concern is shifting the ground at the local level too. We did manage to elect three more council members than before who don't want to lie down for every demand the developers place before us and don't want to run away like cowards from every threat to take them to the Ontario Municipal Board.

My opponent didn't campaign, by the way, on a pro-growth platform. We did not have a referendum for or against growth. My opponent's campaign theme was that there is nothing we can do about it and we have to just suck it up or the OMB will force it on us. If you like, it was a claim of helplessness.

What I think is important to look at is that her vote sank from 22,000 to less than 16,000 as a result of our campaign to control growth. Essentially, Oakville's voters have just about deadlocked, 15,758 to 15,730 in the last count, not on whether we should fight for better control of growth, but on whether we can.

We have an area that we believe fits your mandate, even though your task force leader, Burlington's mayor Rob MacIassac, who voted as a member of Halton's regional council to urbanize north Oakville, has been quoted in the press as saying that because north Oakville has already been urbanized, has already been designated urban, it can't be considered for the greenbelt.

We respectfully disagree with his opinion. Today, I'm here to ask the Legislature, among other things, to please include north Oakville in the greenbelt study area. If you can't or won't do that, we—the citizens' groups, the town, the region and the province in the form of the Ministry of Municipal Affairs and the Ministry of Natural Resources—have identified approximately a third of north Oakville's 3,000 hectares as comprising a coherent natural heritage system. This area and the 400 hectares that the province already owns and calls the North Oakville Land Assembly, at a bare minimum ought to be included in any calculation and creation of a greenbelt. We beg you to do it.

1430

Today, the developers and those who serve them on the councils in the municipalities in Oakville are challenging this so-called interagency review. They are fighting the natural heritage system identified for the north Oakville urban envelope. They falsely claim the only way we can have a natural heritage system is to buy it. They seek to take away from the province, from government the power of land use designation by that kind of claim. They claim that because we have to buy it and we can never afford it, they might as well pave it. They allege we do not have the planning tools to achieve such a natural heritage system. I think they all need to

check their passports. I think they're asserting an American concept of private property rights that's not in step with the more balanced Canadian values on this point.

I began with a description of the political impact of my area's concern about sprawl and pollution on the political colour of the two ridings in the area, because I want to underline to you today that we got the IAR agreement and the identification of the natural heritage system that's now in contest under the previous government. What we didn't get and what we were promised were the means to make the interagency-reviewed and -agreed natural heritage system happen. So we're here to look to you to strengthen and not weaken our hand in these matters.

We didn't vote for Liberal members in the hope that we would get pale imitations of Tories. We didn't vote for Liberal members in the hope that we would be subjected to a watering down of what we had achieved with very hard work over the previous four years. What we did vote for was action on the planning deficit, the refusal in previous years to recognize and deal with all the costs of growth and to see that they are fairly allocated to those who benefit from growth and to stop inflicting those costs on us who suffer from the growth.

On April 2, we therefore joined with 41, now more than 50, other health, environmental and community groups to create the Ontario Greenbelt Alliance in support of efforts to create a greenbelt in the so-called south central planning area of Ontario, not just the Golden Horseshoe. I was among the founding members of the alliance who launched the initiative at a Queen's Park press conference back in April. Alliance members congratulated the McGuinty government on the introduction last December of its proposed Greenbelt Protection Act, which we hoped would help counter the damage from ill-planned urban development, but we warned that the proposal would fall short of what we really need if it fails to adopt amendments to make the protected area larger, greener and stronger.

The alliance and Clear the Air are seeking amendments to Bill 27. We want the 10 most-threatened hot spots of biodiversity and headwaters added to the study area and protected from development so that they can be included in the greenbelt. The greenbelt alliance will be writing you to give you the list of the 10 hot spots. We want the greenbelt study area larger than now envisioned so that it can contain urban sprawl, reduce increases in air pollution, enhance water source protection and biodiversity, and slow the degradation of our quality of life.

We want the greenbelt study area to protect from incompatible highway construction plans that appear to be on a fast track for approval. The Ontario Greenbelt Alliance believes that if the greenbelt is done right, we can look forward to a natural heritage system for Ontario that would link the Niagara Escarpment, the Oak Ridges moraine and the Algonquin Park-Adirondack Park axis. We call that the NOAH natural heritage system.

Clear the Air congratulates the present government for moving quickly on its election commitment to establish a



greenbelt that protects at least 600,000 acres of land within the Golden Horseshoe. The present development moratoria, enacted through the December ministerial zoning orders and, we hope, Bill 27 will provide time to study the concept of a permanent greenbelt and properly implement such a concept in legislation.

Clear the Air endorses and recommends to you four specific changes to Bill 27:

(1) The legislation should have an explicitly stated purpose section indicating that the greenbelt is intended to become part of a larger connected network of protected areas across the province.

(2) Bill 27 should be amended to add a clause placing planning and approvals for all new highways and major infrastructure in abeyance. The ban should cover extensions of 400-series highways, expansions of the capacity of existing 400-series highways, and extensions or expansions of municipal roadways of equivalent size—four lanes or more—in the greenbelt study area that you identify in schedule 1 of the bill and that we hope you'll expand to include the little additions that we're here to talk about today. In particular, no applications or granting of approvals under the Planning Act or the Environmental Assessment Act for such projects should be permitted during the study period.

A similar provision should be added, we think, regarding the approval of extensions or expansions of sewer and water infrastructure beyond existing settlement areas in the study area under the Ontario Water Resources Act and the Environmental Assessment Act, except where such infrastructure is required to service existing dwellings in the study area.

(3) The greenbelt area is too small. It fails to encompass the same area as the Central Ontario Smart Growth Panel did. We believe it fails to take into account the relationship of a permanent greenbelt for the Golden Horseshoe to the rural lands elsewhere in the province. At a minimum, we believe Bill 27 should be amended to include Simcoe and Wellington counties in the study area. Leapfrog development attempts by developers in Simcoe and Wellington were already well underway before the greenbelt order and, unfortunately, the scope of the order has fallen short of containing these cases of runaway bad planning.

(4) Urban boundaries on the Niagara Escarpment should be frozen. Schedule 2 of Bill 27 should be amended to remove the reference to the Niagara Escarpment planning area.

Clear the Air appreciates very much having had a chance to share with you our views on this important bill. My town's member of the Legislature, my friend Kevin Flynn, told the second reading debate in April that the province owns more than 1,100 acres of prime greenbelt-type land in Oakville. We hope that he and you will take the necessary steps to keep that land in public ownership and not sell it off to developers as the previous government intended. That land is a reminder that protecting open space is, and has always been, so mainstream a concept in Ontario that it's been done before, by the Bill

Davis government in the 1970s. They called it the parkway belt, but too much of that is gone now. They exempted, removed and sold parkway belt land as well as many another public asset that wasn't nailed down in the last government. Since before that, the province has had the wonderful words "to protect, preserve and enhance" in its planning and development policies. They just didn't live up to them when their developer pals came calling for favours and exemptions. They made it seem like they wanted the province's planning policies to be more of a guideline than an actual planning code of conduct. We in the great unwashed public would like to know what we can count on. We'd like your planning policies to be more a code of conduct than a mere guideline.

Today's government has been elected in part because all around the GTA people have recognized what they've lost over the last 30 years as the parkway belt was frittered away. Voters responded positively to the new promises they heard to create a stronger and better-protected greenbelt. These areas—Oakville, north Leslie, Durham, Caledon, Simcoe North, Blue Mountain and others—are today the front lines of urban sprawl.

In my own community, the province teamed up with the local planning authorities to assure us of a viable 2,200-acre natural heritage system for the environmental and biological features of the north Oakville urban expansion area, the total of which is a huge 7,600-acre tract of land given over to urban sprawl by previous governments. We're not asking you to turn back the clock on it; we're asking you to help us protect the identified environmentally sensitive lands that comprise our proposed natural heritage system. We don't think that's very radical to ask.

We hope Bill 27 will lead to strengthening the tools and policies, and the philosophy, needed to better preserve, protect and enhance a natural heritage system in Oakville and in every other community subjected to the advancing tidal wave of growth.

**1440**

We're talking about a non-renewable resource here, called the future lifestyle of Ontario. It's clear from the minister's remarks in the Legislature in April that this government understands this fact and is acting on it. He said, "Ontarians need green space, because it improves their quality of life, and a high quality of life is what we were elected to deliver." That's what John Gerretsen said, and we say amen to that. We'd like you to live up to it, though.

I have a speech I give to new groups who ask us to share what we've learned over the last five years. I call that speech That Sucking Sound. That's the way urban growth has been conducted in Ontario over the last few decades. New growth impoverishes existing communities. Established communities lose their community facilities so new ones can be built next door in the new areas. Fire halls close, libraries close, schools close and more which we think is a stupid waste of public capital. Existing facilities, such as landfills, are used up faster than they should be, and more pressure is created to find



them where they can't be found anymore or at least that's the—

**The Chair:** You've got about 30 seconds left.

**Mr Burton:** All right. Growth sucks the money out of our pockets and the time out of our lives. We who rely on our assumption that we elect you to look after our interests seem to disappear, and you only hear from the special interests who come to you and beg for special consideration.

I thank you very much. The only thing else I had to say was a joke and—

**Mr Hudak:** Let's hear it.

**The Chair:** Thank you for taking the time.

*Interjections.*

**The Chair:** Now we're getting behind. Sorry about that.

**Mr Burton:** It's a 30-second joke.

*Interjections.*

**Mr Burton:** Too often planners are working for the bad guys, it seems to us citizens. Let me explain how that works.

A planner dies and goes to hell. When he gets there, he doesn't care for the way he finds Satan has let the place spread out. He persuades Satan he can grow the place faster if he brings in developers and learns to pack the bodies in more tightly by building smaller homes and cutting down on such frills as wide streets and good roads, adequate parking and zoning that keeps homes away from industries. He teaches Satan to start calling it live-work so he can make the sinners think they're getting something new and different that can't be judged by any previous expectations.

Satan rewards the planner with higher pay and lots of junior demons to boss around. Satan lets the developers build themselves giant estates with huge homes far from the new high-density developments they build so they don't have to see or hear the screams of the condemned.

**The Chair:** Thank you, but I have to—

**Mr Burton:** One day God calls Satan to mock him. "How's it going in hell, Satan?" he asks.

"Hey, things are great," Satan says. "We've got sinners stacked up on top of each other now. My sin taxes are going up."

**The Chair:** Mr Burton—

**Mr Burton:** "All my demons are enjoying higher pay. My sinners are more dazed and confused than ever."

God says, "What? You must have a planner. That's not supposed to happen. Send him up here."

Satan says, "No way. I like having a planner. I'm going to keep him."

**The Chair:** Please, the time has expired.

**Mr Burton:** "Send him back up or I'll sue."

"Yeah, right," Satan says, "and just where are you going to get a lawyer?"

Thank you. Once you start a joke, you can't stop. I beg your pardon.

**The Chair:** We're not here for jokes, though.

*Interjections.*

**Mr Peter Kormos (Niagara Centre):** Did you get the joke?

**The Chair:** No.

**Mr Kormos:** Wait. He didn't get the joke.

## TOWN OF NIAGARA-ON-THE-LAKE

**The Chair:** The next presenter will be the town of Niagara-on-the-Lake, Austin Kirkby. As you know, you have 20 minutes. You can take the whole 20 minutes or leave some time at the end for questions from the members.

**Ms Austin Kirkby:** Thank you very much for the opportunity to address you this afternoon. My name is Austin Kirkby, and I have farmed with my husband, John, a third-generation farmer, for over 40 years.

I have been a municipal councillor for the past 12 years. In fact, I entered politics to represent the interests of the farming community. I am currently the chairman of the agricultural subcommittee and the agricultural irrigation committee for the town of Niagara-on-the-Lake.

I'm here today for two reasons. The first is to impress upon you the importance of saving the farmer and the family farm, as well as the agricultural land base. The second reason is that I am very frustrated by the lack of understanding about the needs of our farmers and their particular industry.

Saving the land is easy: Just put all the restrictions you want in place and the land will be preserved. Imagine the frustration we feel as farmers when we read about the importance of saving the land because it is in the best interest of the economy, tourism or society in general, but there is no mention of ensuring the economic viability of the farmer. The farmer is the one who invests his money with the purchase of the farm, the rehabilitation of the land by removing unmarketable crops, underdraining, replanting new crop varieties and the wait for four years until that investment starts to pay off. The farmer is the one who has, up until now, ensured the preservation of the agricultural land.

Yes, saving the land is easy, but will the land be green and productive to boost the economy and tourism or will it be brown and abandoned?

The farming industry and the farms in particular in Niagara-on-the-Lake, like the region, are unique. Crops like tender fruit and grapes are very labour-intensified and are produced on farms that are much smaller than those in the rest of the province. For instance, 78% of total farm holdings in Niagara-on-the-Lake are under 69 acres, whereas only 25% of the total farm holdings in the province are under 69 acres. In fact, 25% of the total farm holdings in Niagara-on-the-Lake are under 10 acres, compared to only 4% in the province. Total land holdings can, and most often do, encompass more than one farm. Earlier today we heard about 69 acres that most often, could encompass six to seven farms—33% of the farms in Niagara-on-the-Lake are 33 acres.

Regional differences must be recognized. A broad-brush approach to land restriction will be unfair to areas like Niagara-on-the-Lake and the Niagara region because of this.

There have been a lot of articles printed about the disappearance of farmland. I believe the Niagara region, and Niagara-on-the-Lake in particular, have done a good job of protecting their agricultural land. I have enclosed a regional map showing the urban area boundary expansions from 1981 to 2002 that will prove my point. If you just turn your page over, you'll see Niagara-on-the-Lake in the very corner and the black dots are the urban area expansions in 10 years. I think Niagara-on-the-Lake has done an excellent job of protecting their farmland.

There has been discussion about the elimination and restriction of severances because of the disappearance of farmland. A report referring to the Niagara region stated, "There has been a significant decrease in both the number of applications received and the number of lots created each year in agricultural land during the decade". In fact, the numbers were reduced by almost 50%.

I am concerned about the elimination of retirement lot severances but especially about the elimination or restriction of the ability to remove surplus farm dwellings when farmers buy additional agricultural land.

Niagara-on-the-Lake increased their productive agricultural land by 3% from 1996 to 2001, and I believe the stats will prove this has increased even more today. The financial return from the sale of the existing farmhouse by a young farmer when he purchases additional land to expand his operation permits him or her to reinvest that capital back into the rehabilitation of the land. What was once abandoned will become a productive farm, ensuring an economic benefit to the whole community, the region and the province but, most importantly, to the farmer.

The elimination or restriction of severances for existing surplus farm dwellings is, in my opinion, the most crucial aspect of the greenbelt legislation. I believe it will not only curtail the expansion of family farms but will remove the incentive for the next generation to enter the farming industry. A surplus farm dwelling is just that. It is an existing house that is surplus to the farming needs of the farmer, but it has a high financial benefit because its sale provides financial returns to reinvest back into the farming operation.

The Niagara Regional Agricultural Task Force produced a report entitled *Securing a Legacy for Niagara's Agricultural Land*, which outlines what measures have to be implemented to ensure the economic viability of our whole agricultural industry in the Niagara region. The tender fruit and grape producers have also done reports about what needs to be done for those specific industries to be economically viable. These initiatives must be implemented as part of any greenbelt legislation. Requests have been made, including one from Niagara-on-the-Lake, to have an agricultural subcommittee formed to deal with these issues.

As I stated earlier, the farming industry, and in particular the size of farms, in Niagara-on-the-Lake are

unique to the province. Provincial legislation must also recognize this fact.

#### 1450

Before I close, I would like to make some additional comments, if I may. Earlier there was mention of a number of severances. I think the figure was about 5,000. They're not all on agricultural land; in fact, only a very small portion of them are on agricultural land. When severances are created, they're created for six reasons:

(1) A new lot: It's a creation of a farm parcel, where both the remnant and new lot created—or farm; they call it a lot, but it's a farm—are considered to be capable of being a viable farm property. They are capable of being a viable farm property because of the gross dollar value received per acre from an intensive farming industry like tender fruit and grapes.

(2) Boundary adjustments: They do not result in the creation of a new residential building opportunity, but they're listed as one of those severances.

(3) Retirement lots: Niagara-on-the-Lake has one of the strictest requirements. Our official plan states "The applicant has farmed in Niagara-on-the-Lake since the 20th of December, 1973," the date of the adoption of the official plan of the Niagara region.

(4) Another reason is easements.

(5) Surplus farm dwellings: It's very important to realize that these applications separate existing dwellings from farm parcels. However, a zoning amendment is required to preclude residential development of a vacant parcel, and therefore a new residential building opportunity is not created.

(6) The last is an infill severance policy.

When these figures are tossed at you, it's very important that you realize that only through the retirement lot or infill policies can a residential building opportunity be created independent of a farm operation. In fact, the house of one member, Mr Ziraldo, a former owner of Inniskillin Wines, was severed as a surplus farm dwelling when he sold his property to Vincor wines. The winery itself was 18 acres, very much the size of the farm parcels in Niagara-on-the-Lake.

These are stats that are very important to realize. Despite the severances, Niagara-on-the-Lake continues to be one of the most active and important agricultural communities in the Niagara region. It has an agricultural industry that represents 60% of tender fruit and grapes grown in the province, as well as greenhouse and ornamental crops. The grape industry in Niagara-on-the-Lake produces 55% of Ontario's grapes, has a farm gate value of \$25 million and generates \$100 million per year in government income from the sale of wine. The tender fruit industry in Niagara-on-the-Lake produces 60% of the tender fruit in the region. It has a farm gate value of \$24 million, and the estimated spinoff ratio represents \$120 million per year in economic activity from the industry. This is due to the very intensive farming practised in Niagara-on-the-Lake, compared to other areas of the province.

I can't impress upon you enough the importance of recognizing our farm size. With your indulgence, this is a



map of Niagara-on-the-Lake. It's very difficult for you to see. I can't leave it. I've only got one and I don't dare part with it. It shows you how small we are in farm sizes. Niagara region is very similar—Lincoln. We're not anything like the rest of the province. To restrict our severances, with the size of the farm parcel, is only going to hurt our industry. That's the only reason I brought the map. We had it done in the 1990s. There may be some changes but probably not many.

I can't impress upon you more the importance of supporting what has been requested: the addition of an agricultural subcommittee, set up by the province before this legislation is finalized, that will address some of these things. You can't do it with a broad-brush stroke. You can't just eliminate severances or say "only severances of 75 acres." That doesn't pertain to Niagara-on-the-Lake. That will eliminate a lot of young farmers from entering the business, because of the farm sizes we currently or historically have.

There are things our government can do. This is frustrating for me. I'm a grape grower, and I get this. This is one of the latest applications or whatever from the LCBO. You look in it, and there's Australia, Australia, California, Chile, South Africa—oh, one from Ontario. It's not even VQA. It is Ontario wine, but it's not VQA. The latest one, I understand, which I haven't seen—I heard yesterday—has the employees of the LCBO talking about all the areas they like. I don't think we're included.

That, to me, as a grape grower, is the most frustrating thing, to be honest with you. I couldn't resist bringing it. I haven't got a copy for you, but I have provided you with some information to look at. I hope you will. You'll see by the figures that in Niagara-on-the-Lake, even though they're small farms, they have increased their land.

There are articles, unfortunately, by a grape grower in this area. He was offered \$600 a tonne by Vincor winery because his grapes were surplus. This was on November 13, 2002. At the time, everybody else got \$1,775, but he was offered \$600.

There's more information that goes along with it. You can read it at your leisure. It's frustrating as a farmer, but I appreciate the time that has been allowed to me today to present our concerns.

**The Chair:** Thank you. We have six minutes left. Ms Churley.

**Ms Churley:** I'm going to share my time with my colleague from here, Peter Kormos.

First of all, thank you. You came very well prepared. Your organization certainly has a good representative.

**Ms Kirkby:** Well, staying up all night probably helps too.

**Ms Churley:** I'll bet. It's very well prepared.

I have to tell you, you have two former consumer and commercial relations ministers here from the NDP. I totally agree with you about Ontario wines. It's shocking that still today we're not seeing more promotion by, let's face it, our own government-run LCBO. For the record, I want you to know that I only drink Ontario wines.

**Ms Kirkby:** I hope it's VQA.

**Ms Churley:** Absolutely.

**Ms Kirkby:** Because all Ontario wine—

**Interjection:** Is not equal.

**Ms Churley:** Exactly. I agree. I understand, and I support you on that. You have my full support on that.

Just very quickly, because I know Peter wants to ask a question on the severances. It seems that is the controversial issue here.

**Ms Kirkby:** That's why I added some comments.

**Ms Churley:** Yes, and I understand that. I think that the overall concern is making sure we conserve the land for agriculture, however it's done. That's the bottom line. I don't think we have any disagreement on that.

**Ms Kirkby:** No. My point is that surplus farm dwellings don't take anything more out of agricultural land. That's the important item that I think needs to be conveyed today.

**Mr Kormos:** Ms Kirkby, thanks for coming. There are some farmers over on the other side. I want to raise this issue: Last year or a year and a half ago the government put a representative of the wine industry on the grape growers' marketing board.

**Ms Kirkby:** Yes.

**Mr Kormos:** That was, to me—now you may disagree with me—like putting a fox in the henhouse and certainly didn't do the farmers any favours. It really rotted my socks, quite frankly, when it happened. I thought it was a real disservice. I agree with you that if you let farmers make decent livings off their land, they'll be the best and most effective stewards of that farmland that you could ever find.

So now that we've got these—some of them are newly elected. The talk about fox in the henhouse syndrome, with the statutory representative of the wine industry on the grape growers' marketing board.

**Ms Kirkby:** I think that's been reversed.

**Mr Kormos:** But talk to them about the practice.

**Ms Kirkby:** We negotiate for the sale of our grapes. As you saw there, it was \$1,775 for the one variety. But if you have a member from the wine council—and this is who we're negotiating with for the sale of our grapes or the price of our grapes—on our board or our producing board, how can you negotiate? It's a negotiating factor. You can't have them there. That's our biggest concern. The bottom line for us as growers is getting the most value from our crop to cover expenses and make a decent living. That's all we ask.

1500

**The Chair:** Mrs Van Bommel.

**Mrs Van Bommel:** I just want to address the issue of surplus buildings. As Mr Kormos has said, I am a farmer. I am a broiler producer. I sit on 50 acres of land north of London, and 50 acres in that area is very small.

One of the things I have experienced as a farmer is that whole issue of surplus buildings and the ability of existing farmers to pay more for that farm because they know they can sever that house and an acre and sell it. That helps them to pay. How do you justify, or how do



you reconcile—that's probably a better word—that against the new entrant, the new farmer who needs to buy that farm but needs to live in the house and is not going to be able to sever that house and sell it in order to help pay a higher price? They, in turn, are competing against the farmer who can sever it and therefore offer a higher price to get that farm.

**Ms Kirkby:** I think it was stated earlier—and you probably recognize this—that the average farm family now is around 55 years of age. It's their children who are going into the business and, as has been stated earlier, they don't all need these houses. Of course—and I think Len Troup said it very clearly—some of the buildings will not be severed, because they will be needed to live in.

But it's as you expand the operation. I'm chairman of the irrigation committee and I see the lists. We have farmers in Niagara-on-the-Lake who have probably picked up 20 parcels, and you can see the size of our farm parcels. I live on a 12-acre farm, and it's relatively average in Niagara-on-the-Lake. That's what we have. The existing houses are there. No farm family needs 20 houses. That's how you expand the operation. You buy the farm and sell the house back to the original owner of the farm or to somebody new. But at least you're able to capitalize that money back into the rehabilitation of the land. Often you'll buy a farm, and perhaps the reason the farm is for sale is because the crops that are there aren't marketable.

**Mrs Van Bommel:** How do we handle the new entrants? You talk about family farms—

**The Chair:** Your time is up, Mrs Van Bommel.

**Mr Kormos:** Unanimous consent to—

**Mrs Van Bommel:** No, that's fair.

**The Chair:** Mr Hudak.

**Mrs Van Bommel:** Tim can have his turn.

**The Chair:** I want to run it properly.

**Mr Hudak:** Councillor Kirkby, I want to thank you very much for the very comprehensive presentation and the support material you've brought in.

I had two points. One, you're absolutely right: If you save the farmer, then you'll save the farmland, and perhaps this committee could look at some amendment to this bill that would not bring parts of the bill into effect until that plan is in place. I'm very concerned that the cart is well ahead of the horse here, that we'll pass legislation and bind everybody in on a wing and a prayer that someday we'll see the farm support policy. Do you think that's a fair point?

**Ms Kirkby:** I'm a farmer, and I've been one for over 40 years. I certainly support the endurance of the farming industry, but I am concerned if legislation is brought in that, for instance, eliminates all severances. One farmer phoned me this morning, and he wanted to be here, but of course the weather is so nice that he can't be here; it's the wrong time to have these meetings. But they're concerned for their future. They're a young farm family of three men who took over the family farm, and they're expanding like crazy, buying these farms. They won't be

doing that in the future if surplus farm dwellings are eliminated. My concern is, wait until all these other things have been identified besides severances. Severance is one issue, but there are other things that have to be identified—amending the Wine Content Act—for their survival. You can't save the land, have all the grapes in production and not be able to sell them.

**Mr Hudak:** The other point I was going to make is with regard to your experience as a municipal councillor. Subsection 8(2) gives the authority to the Minister of Municipal Affairs to make regulations—which means it wouldn't have to go to the Legislature, no consultation; it's through cabinet—to define the urban settlement area in a community like Niagara-on-the-Lake, to define what an allowable use is outside of the urban boundaries, for example. How do you feel about an approach where more power goes to the Minister of Municipal Affairs as opposed to being decided by the local council?

**Ms Kirkby:** I strongly disagree. I think the decision should be made at a local level. As I stated, in the farm size we're all unique. We're different. If you look at our urban boundary, we've actually expanded in a circle to save the best agricultural land. We are good stewards and have been good stewards of our agricultural land in Niagara-on-the-Lake. That's why I brought the map, to show you clearly what we have been. I think our record speaks for itself, and those decisions should be left to local municipal councils.

**The Chair:** Thank you very much for your presentation, Ms Kirkby. Our time is up.

**Mr Kormos:** You're in such a hurry to get out of here.

**The Chair:** We're not here as actors; we're here representing the government.

## HAMILTON-HALTON HOME BUILDERS' ASSOCIATION

**The Chair:** The next presenter is the Hamilton-Halton Home Builders' Association, Fred Toy and Mike Foley. Welcome to the public hearings. As you know, you have 20 minutes to make a presentation. If you take the 20 minutes, there won't be any time left for questions. If there is any time left, the questions will start with the government side.

**Mr Fred Toy:** I am Fred Toy, and to my right is Mike Foley. I have a prepared statement that I believe you have a copy of, and I would like to go through it with you.

The Hamilton-Halton Home Builders' Association represents approximately 400 home builders, trades and suppliers in the Hamilton-Halton region. In 2003, 3,260 new homes were built by our members. In Ontario, the housing industry contributes approximately \$18 billion to the GTA economy and the employment of over 240,000 people. This makes the home building industry one of the largest employers in the province. Approximately 20% of the price of each new home in Ontario is the result of local, provincial and federal taxes imposed on the housing industry.



The impact of the housing industry on the province's economy cannot be understated. We not only build homes, we build communities and economic prosperity in the communities where we live and work. Because home ownership and the community's built form is so integral to the makeup of our social fabric, any proposed changes to the environment in which housing is planned and built will profoundly affect our society as a whole. It is with this in mind that we provide our feedback regarding the proposed greenbelt legislation and some alternative methods for accomplishing the province's objectives without affecting the equilibrium of the province's housing market.

The biggest challenge facing the city is providing employment opportunities to a population which is slated to increase by 30,000 people by 2008 and to provide an adequate housing supply as the population increases. There currently exists a deficiency of residential land to meet the provincially required minimum of a 20-year residential land supply within the city of Hamilton. This supply can be accommodated by the lower Stoney Creek urban boundary expansion, which currently has the servicing infrastructure in place. However, this land is currently frozen by the minister's zoning order. The city of Hamilton has also identified a deficiency in the amount of land currently designated for employment uses in traditional industrial parks as well as employment lands adjacent to the Hamilton International Airport in support of the city's economic growth strategy in this area. Bill 27, as currently written, will have a devastating impact on the city's ability to adequately manage the housing and employment needs of our growing population.

Hamilton is an economy in transition. An economy which has had heavy reliance on the steel industry and manufacturing is evolving into six new economic growth centres focusing on advanced manufacturing, agribusiness, the Hamilton International Airport, health and biotechnology, information and communication technology, and the film industry. The city and business community have embraced the Team Hamilton approach of focusing the energies of the local, provincial and federal governments to foster the renaissance of the city.

1510

Hamilton has been a leader in promoting sustainable development by adopting the Vision 2020 sustainable growth vision as the basis for its new official plan. Through its downtown renewal projects and brownfield redevelopment strategies, redevelopment in the downtown core has taken hold, with a 42% increase in building permit activity from 2001 to 2002. Clearly Hamilton is moving in the right direction.

The key to Hamilton's growth management strategy is the GRIDS project—Growth Related Integrated Development Strategy—which will review the integrated needs of planning and infrastructure to manage sustainable growth in Hamilton to the year 2031. This is a model of growth management that should be emulated throughout the province. The GRIDS priorities will be established and

evaluated using the triple bottom line approach, which takes into account the social, economic and environmental costs and benefits of growth-related policies. These policies are to form the basis of the city's new official plan outlining the blueprint of growth management in Hamilton.

It is the Hamilton-Halton Home Builders' Association's position that responsible growth management decisions are best made by local municipalities within the parameters of provincial policy.

Hamilton is putting the tools in place to manage this growth in a sustainable manner. However, the pending imposition of a permanent greenbelt or urban growth boundary will adversely impact our industry's ability to accommodate and manage this growth in a sustainable manner. In the Halton region, the five-year review of the region's official plan has been completed with the recommendation that no new lands be added to the urban boundary at this time. This is significant from the perspective that local governments are making decisions regarding sustainable growth without the intervention of the province.

Urban growth boundaries have been in use for many years, most notably in Portland, Oregon, which is the birthplace of the smart growth movement. The urban growth boundary in Portland was instituted in the late 1970s and has been widely lauded as the prime example of smart growth. The primary objective of the UGB was to increase densities and promote the use of mass transit. It is interesting to note that, for its 30 years of promoting density within the city limits, the population density of Portland falls well below many Canadian cities that have no such legislation.

We fail to see the need to borrow from the American planning experience to institute smart growth when in fact our successes regarding managed growth far exceed those of the United States. Research has shown that affordability and accessibility to housing decreases with the imposition of an urban growth boundary. The Portland experience illustrates an unintended yet very large impact on moderate- to low-income households. Reduction in the supply of available land increases competition for a scarce resource, which translates into higher land and housing prices.

The impact is felt primarily by lower-income families who have now been marginalized by the lack of affordable housing and the requirement to spend more household income on housing. According to the Vision 2020 annual sustainability indicators report, 16% of families in Hamilton are considered low-income. Social housing is similarly affected, given the increase in costs and competition for land. We must ensure that the province fosters a planning environment that allows for flexibility, affordability and accessibility across a wide economic spectrum of society.

It is the position of the Hamilton-Halton Home Builders' Association that the imposition of an urban growth boundary by the province will directly impact the affordability and accessibility of housing for Ontarians



and will adversely impact the home building industry's ability to respond to the needs of Ontario's growing population.

Recent research has shown that the imposition of an urban growth boundary and forced high-density requirements has a negative impact on the ability to manage traffic congestion. The impacts of 25 years of a UGB in Portland are starting to show their effects. The annual urban mobility report published in September 2003 by the Texas Transportation Institute indicates that Portland had one of the highest increases in congestion in the United States, increasing 37% from 1982 to 2001.

In the Hamilton context, traffic congestion is mainly caused by the net deficit in commuters out of Hamilton to find work. The table in your information illustrates commuter trends in Hamilton over the last 30 years. As an example, in 1971, 7,400 commuters; in the year 2001, 23,235 commuters.

Clearly there is a need for more serviced employment lands within the city of Hamilton to provide an opportunity for people to work in the community where they live. As part of the city of Hamilton's economic development initiative, the need for additional serviceable industrial land has been identified. Employment lands adjacent to Hamilton's international airport will also be required for support of the airport as one of Hamilton's economic growth clusters. Clearly, the imposition of an urban growth boundary will have an adverse effect on the city's ability to reverse the commuter flow and ease traffic congestion. In fact, the province's policy will most likely have the opposite effect.

It is the position of the Hamilton-Halton Home Builders' Association that the province's imposition of an urban growth boundary will only increase the problem of traffic congestion in the Hamilton and greater Toronto area and hinder the municipality's ability to reduce the commuter deficit by limiting the growth of serviceable employment lands within the city of Hamilton.

The growth pressure on municipalities outside the urban growth boundary will increase significantly. These municipalities have neither planned for nor have the capacity to accommodate the unexpected population growth resulting from the province's direction. One of the main reasons that Hamilton and the GTA have been able to accommodate the growth is the ease of servicing capacity resulting from the close proximity of Lake Ontario. Municipalities outside the proposed greenbelt currently rely on groundwater, rivers or minor lakes for their servicing strategies. The imposition of this unpredicted growth will undoubtedly strain the financial ability of these municipalities to deal with the need for increased hard and soft services. This is not just sewers and water but also schools, hospitals, police and fire protection. The strain of these increased growth pressures on the social fabric will ultimately affect the quality of life we are trying to achieve for future generations.

There are many instances where parcels of land exist within urban boundaries that have not developed due to economic feasibility or practicality. These include sub-

standard parks, remnants of parcels in old plans of subdivisions, unopened road allowances and surplus lands within the city's real estate inventory. With the increase in land and housing prices anticipated with the imposition of an urban growth boundary, there will be pressure to convert these open spaces into urban uses. Although the effective use of existing land is desirable, such development can destabilize existing neighbourhoods and produce concern among residents about the impact on the built form of the neighbourhood and the impact on the character of the community. Lands not identified in the hierarchy of master parks and open space plans will come under pressure for conversion, to the possible detriment of the existing community.

There is no evidence to support the premise that the imposition of an urban growth boundary will promote increased public transit use within municipalities. According to the study prepared for Transport Canada, *Urban Transit in Canada—Taking Stock*, July 19, 2001, although the absolute number of riders has increased over the years, the numbers of passenger trips per capita has not kept pace with the population growth. It is not anticipated that even with large investments in transit, work transit trips will significantly increase. Clearly, taxpayer dollars can be more effectively spent in building infrastructure to support our growing population and providing employment and housing opportunities within the community.

The recommended vision of managed growth in Ontario is balanced smart growth. The Hamilton-Halton Home Builders' Association believes in balanced smart growth which balances housing needs and the environment, long-term infrastructure requirements and the ability to pay for them, the need to implement controls and the need to provide affordable housing, the need for transportation links, and the needs of communities through which these links are planned. It is our position that there is a need to provide a balanced approach to urban growth which recognizes the need for greenfield development based on Smart Growth principles, intensification of development in appropriate urban areas, brownfield redevelopment and an effective use of infrastructure spending.

#### 1520

There is no question that Hamilton and the GTA will continue to grow. It is how we manage this growth that is of paramount importance to the province, the city and the home building industry. The province should empower the local municipalities to manage growth in the local context, given a policy framework of balanced smart growth provided by the province.

We do not feel that a permanent greenbelt around the Golden Horseshoe is required in order to protect provincial interests regarding the Niagara Escarpment and the Oak Ridges moraine. A less invasive mechanism to ensure environmental stewardship at the provincial level is required.

In order to promote the revitalization of urban cores, the province must provide assistance to local municipi-



palities in providing incentives for brownfield redevelopment. The assistance involves incremental tax funding and legislative changes which will reduce future liability for landowners who clean up and redevelop derelict sites.

In conclusion, the Hamilton-Halton Home Builders' Association recommends the following:

(1) That the proposed greenbelt be replaced by a less invasive mechanism to ensure that provincial interests regarding agriculture and environmental stewardship are maintained.

(2) That municipalities be empowered to manage growth in accordance with their local needs and reflect the principles of balanced smart growth.

(3) That the province encourage the redevelopment and intensification of downtown cores by financially supporting municipalities with brownfield redevelopment and legislative changes that reduce future liabilities of developers.

I thank you very much for your time.

**The Chair:** Mr Parsons. We have just enough time for one question.

**Mr Ernie Parsons (Prince Edward-Hastings):** Your presentation excites me, but not in the way that you hoped for, I don't think.

**Mr Hudak:** Be nice, Ernie.

**Mr Parsons:** Well, I farm and I've seen farmland change to houses, but I've never seen houses change to farmland. With these new houses that you are talking about, the people need to eat. In a rural area, farmers have tremendous effect on the land that they farm, far beyond the property they own. They drive it up to the point where farmers can't afford to expand.

I'm an engineer, and I came out of university believing we should pave the world because that would be good for my career, but now I look at the existing urban cities, and these cities weren't planned. There's no city in Ontario that was planned 100 years ago. Do you not believe that we should preserve our farmland, leave the rural areas alone, go back into our existing cities and do it right?

I appreciate your comments about the brownfields. I think there are all kinds of opportunities. I look at the urban areas in large cities in Ontario and I see empty schools. I see an abandoned downtown that I think could be renovated, and leave our farmland alone. I guess I'm surprised at the suggestion that we need to keep going. If we build more highways and pave more roads and build more houses—but the urban areas now are already serviced. We've got the water, the sewers, the schools and the hospitals. We've got everything there. Do you not think there's an opportunity?

I appreciate your business and I appreciate the need for housing. That's the opportunity to work within the existing cities and make them right.

**Mr Mike Foley:** I appreciate your comments. I think our position is that there needs to be a balance. There is no way that existing brownfield or urban areas will be able to accommodate all the growth that's anticipated over the next 25 years. I believe, in the GTA, we're expecting another 3 million immigrants and people who

are going to be empty nesters who are going to require housing. What we're saying is that there needs to be a balance in responsible greenfield growth. There has to be a renewed emphasis on our urban cores. As was noted by other people today, the best way to preserve farmland is to preserve the farmer. That's a personal opinion. So again, I think our position is more one of balance as opposed to moratoriums.

**The Chair:** Our time is up. Thank you, Mr Toy and Mr Foley.

**Mr Hudak:** On a point of order, Mr Chair.

**The Chair:** On what issue?

**Mr Hudak:** On whatever I want to talk about, Chair.

**Mr Kormos:** On whatever he wants.

**The Chair:** OK, I'll take it.

**Mr Hudak:** Two points I wanted to make. I wanted to make a formal request for the benefit of all members of the committee. We've heard today about the support for the farmer and types of development that could be allowed—

*Interjection.*

**Mr Hudak:** I'm sorry, John. Thank you very much.

The one thing I struggle with when I read through the legislation is, what will be some of the allowable uses of land outside of the urban areas if Bill 27 passes? Sections 5, 6 and 8, and other parts of the bill refer to "urban uses."

**The Chair:** Mr Hudak, we're here to listen to what the people have to say about the bill. We're not here to pass any motion.

**Mr Hudak:** It's a simple request for information.

**The Chair:** A question to the ministry?

**Mr Hudak:** That's exactly what I'm getting at. Section 1 has definitions of what an urban use is. The definitions are very general: non-agricultural commercial, non-agricultural industrial, etc. Could the ministry supply to members of the committee as soon as possible, preferably by Monday's hearings, a better understanding of what those definitions mean.

For example, we've heard from wineries—whether a winery production facility would be considered an urban use under that definition or not—and cherry pitting operations, for example, the types of operations that support agriculture and make agriculture in Niagara viable. I, for one, just want to make sure that they would continue to be allowed if Bill 27 passes. So that's my request for definitions of "urban uses." I'd like some more clarity on that.

The second aspect: The Planning Act is referred to quite liberally in the legislation in various sections. I was wondering if there was some explanatory material that would be available to committee members for the parts of the Planning Act that are relevant for this legislation so that I could best understand the impact of Bill 27 on local municipal decisions, for example—just a simple request for information, since we don't have the Planning Act before us. I believe it's probably a relatively complex act, and interactions between the two bills.

The last point I had—I know that next on the list is the region of Niagara. I don't see Pat Robson here yet. He

may be arriving shortly. We do have the Mayor of Port Colborne in the audience, who sought to have a chance to address the committee. I don't think he wants the entire 20 minutes of time. The mayor assured me that he had a brief presentation on an important issue on Bill 27. I would seek all members' support to allow the Mayor of Port Colborne to do a quick presentation.

**The Chair:** I have no objection to that, as long we keep on time. Is Mr Patrick Robson in the room? No. If there is unanimous approval, I will accept it.

**Mr Parsons:** Is this in lieu of?

**The Chair:** In lieu of.

**Clerk of the Committee (Ms Tonia Grannum):** You can't do that because—

**Mr Hudak:** I don't think you can deny Mr Robson his chance, but why don't we let the mayor begin?

**The Chair:** As long as we get on this one on time.

**Mr Arthurs:** In the absence of the delegation at this point, it might be worthwhile just to check and see whether the next deputation is here and whether they'd like to present at this time.

**The Chair:** As the clerk just said, we should go on to the next one. If Mr Robson doesn't show up, we'll definitely accept the mayor of Port Colborne at the end.

I have to apologize, Mr Hudak. You were asking a question to the ministry people a little while ago.

**Mr Hudak:** Yes, I would just like to ask the ministry staff to supply that information to members.

**The Chair:** That's OK. I've taken that.

**Mr Kormos:** On a point of order, Chair: I have a question to put the ministry staff as well. As you know, the government has not yet established the requirement that Ontario wine be 100% Ontario grape or Ontario juice. We'd like the ministry to provide this committee with its data on the impact of requiring that Ontario wine be 100% Ontario grape or Ontario juice.

As you know, truckloads and shiploads of Chilean juice, amongst others, are shipped into Canada and become part of what's labelled Ontario wine. Especially with respect to the preservation of vineyards and the grape-growing industry in Niagara, I believe that question is valid to the considerations of this committee. So I ask the Chair to request that the committee be provided with the information, as I have requested.

**The Chair:** Thank you, Mr Kormos. We'll try to get that answered by Monday, if it's possible; if not, prior to the end of the hearings.

1530

#### PRESERVATION OF AGRICULTURAL LANDS SOCIETY

**The Chair:** My next presenters will be the Preservation of Agricultural Lands Society, John Bacher and Gracia Janes. Thank you for coming. You have exactly 20 minutes to make your presentation. Either you take the whole 20 minutes, or you leave some time at the end for question period.

**Ms Gracia Janes:** I'd like to thank you for the opportunity to speak to the standing committee.

For those of you who don't know who we are—I'm sure some of you do—and to give you a little flavour of the kind of work we do, I thought I'd give you just a brief introduction and then I'll turn it over to Dr Bacher to read our brief.

PALS is perhaps the sole group in Ontario, if not Canada, that has as its mandate to preserve the best lands in Canada and the industry that relies on the land to keep growing and to feed us. We have fought for land preservation for over 28 years and also to support the farmer.

Our first experience has been when these boundaries here in Niagara were being set. We were the people who were cited by the OMB as being the defenders of the land in the absence of others, particularly the government. The planner who spoke for PALS—the various principles that he put forward were found in the final plan. We won a little over half of the land that was in question.

Also, over the years we have monitored the boundaries and we've gone to hearings. I cite one of the most recent ones. We'll tell you how hard we have to work. We were at a hearing in Pelham recently, where 35 acres of tender fruit land was under dispute. We didn't have a lawyer, but we presented good witnesses—the commissioner of planning was subpoenaed—and the OMB chairman determined that not only did the golf course have the legitimate desire to have that fruit land for a golf complex, but that our regional plan was too strong; it was stronger than the provincial policy.

So we've worked very hard on the land, but we've also worked to help the farmer. One of our most significant achievements was the bringing forward of the tender fruit lands program to the farmers first, and then working with the government, the farmers and the region of Niagara to make that program happen—well, it almost happened. We had it all in place. The farmers were going to be paid to put easements on their land in perpetuity. The government changed, and the program was cancelled. We still have considerable support for that program, and we feel it's an important one because it recognizes that farmers can't be kept out on the periphery until we want to develop their land. Therefore, there has to be some kind of compensation there in the public good, and also that it provides permanence—"in perpetuity" is on the deed.

With that in mind, I'll turn the proceedings over to Dr Bacher.

**Dr John Bacher:** Thank you. I think the reason we're here today—the former Attorney General of Ontario, Norm Sterling, at the 25th anniversary of the founding of the Coalition on the Niagara Escarpment, indicated that when environmentally concerned organizations hear that governments have taken good positions in the public good to protect the environment, it's very important that the world hear about this. We think that Bill 27, which has the effect of freezing development in Niagara while plans to protect fruit land in the long term are determined, is certainly a welcome measure to our organiza-



tion. As has been indicated earlier, this has really been our whole purpose of being.

Unlike some municipalities and others, including developers, who have criticized Bill 27 and the minister's order under Ontario regulation 432/03 and even asked for financial compensation for lost growth potential, we believe that the Greenbelt Protection Act, and eventually the long-term plan for Niagara, just reinforce the existing policies of the regional policy plan which have been in effect ever since 1982, when it was approved by the provincial government.

Some in the region have asked for compensation for new mechanisms to take growth away from the unique land in Niagara. We feel there is no need for these, and are certainly opposed to one suggested option: the construction of the mid-peninsula corridor expressway. This will encourage urban sprawl and defeat smart growth.

As an aside, only a tiny fraction of the funds to develop this cross-peninsula highway could enable the province to pay for what we consider to be the only permanent long-term protection of the fruit lands: renewal and expansion of the Niagara tender fruitlands program. This provincial/regional/farm-and-PALS-developed program was abruptly terminated in 1995 despite the fact that 65% of the tender fruit farmers had applied for participation, and even in the short term several urban boundaries could have been made permanent through easements on farm titles in perpetuity.

As well, over the years many good planning mechanisms have been developed by the Niagara region and area municipalities and incorporated into planning and servicing documents. These would discourage growth away from the unique fruitlands that the proposed greenbelt seeks to protect. The most wide-ranging are the plans to develop the community of Port Robinson as a future urban growth node. In addition to being incorporated into official plans, this concept is supported by long-term servicing studies. This expansion area is only one of many areas of vacant urban-zoned land that are adequate for future growth.

In point 1 we stress that understanding the freeze is reinforcing the existing policies of the regional policy plan which, as I point out, emerged through a very exhaustive process of deliberation. This took place many years after the region was formed in 1972. This plan was finished in 1982. It was 10 years of debate. You got an elegantly crafted compromise which allowed for extensive room for growth, combined with longer-term policies to redirect growth away from the unique lands of the Niagara fruit belt.

During a lengthy OMB hearing in 1979-80, the concept of the permanent boundary was put forward by the then solicitor of the city of St Catharines, the highly respected Stuart Ellis. This concept was intended to express the principle that in the Niagara region, where urban boundaries are adjacent to lands that are designated unique—tender fruit or good grape—they would be permanent. Future urban expansions would take place only on lands that are designated as good general or rural

lands. These arguments were accepted by the OMB and were incorporated into the Niagara regional plan as an appendix, which is unamended.

Generally, the principles of the permanent urban boundary have been respected for two decades, and the most important urban area expansion to date has been away from the fruit area, adjacent to Port Robinson. As well, using good planning principles, some surplus industrial lands in the region have been re-designated for residential growth, most significantly the development of the Niagara-on-the-Green community in the former Glendale industrial park, where projected growth from St Catharines was redirected to Niagara-on-the-Lake.

As an aside, you heard a lot from a previous presenter about the supposed harm that was done in Portland when similar policies were in existence. We haven't seen these sorts of ills that he spoke about in Niagara.

#### 1540

The only major breach of a boundary abutting tender fruit land came in 2000, when the town of Pelham was allowed by the OMB to expand on to over 500 acres of land designated as tender fruit in the policy plan. This shows why the greenbelt freeze is needed: to ensure that the existing policies of the Niagara regional plan are properly enforced. Indeed, the freeze directly clashes with what may become the second most significant breach of the boundaries, the proposed Deanfield Farms development in Grimsby.

In drawing the map of Niagara for the greenbelt, what was protected was the unique area. The freeze protects this area from arbitrary decisions by the OMB. One of the impacts of the freeze has been to stay the Deanfield Farms proposal, which had earlier been appealed by both the province and Andrés Wines as a violation of the principles of the policy plan.

Except for Pelham, major urban expansions have been on lands that are of lesser agricultural capability than unique tender fruit and grape areas. This has ensured that even if the freeze was extended to the entire Niagara area, there would be ample room for urban expansion, for well over the normal 20- to 30-year planning period. According to the Niagara regional planning department, there is a capacity for 77,100 residential units within our urban boundaries for the next 33 years, and a projected need for only 58,000 units. There are many ways to show that this is in fact a conservative estimate of the surplus. A population estimate was employed by the region which is higher than that developed for us by the province.

There's about seven times as much industrial land zoned will ever be needed in this period. The Niagara regional planning department has recommended that the density of residential units per acre increase from the current five to eight units per acre to 13. Current figures of land surplus do not take into account the 2,677 acres of brownfield sites that have been identified by the planning department for redevelopment potential.

When the urban boundaries were established on the unique land, the province understood that these were to be permanent and they actually paid compensation to the



municipalities on this basis. The payout was \$4 million, which amounts to \$12.9 million in current dollars. This is not widely known or understood. It would be reasonable for the province to request compensation for the over 500-acre expansion of the Pelham urban boundaries in 2000. In terms of current dollars, this would amount to \$400,000. Many of the areas currently impacted by the freeze are where there is a clash with the Deanfield Farms and may be lands where the province actually provided compensation in these cases.

The freeze does allow exemptions for ancillary agricultural uses. In fact, initially we did not comment on the greenbelt proposal because we were concerned that there were too many exemptions. In response to the planning committee's request for "an exemption process in the Niagara region to assist and guide municipalities on issues supporting agriculture during the consultation period," we noted that there are provisions in the zoning order for exemptions.

In the planning report, they came up with the DPD 32-2004. They indicated, "What are the proposed developments that clash with agriculture?" and they didn't find any. What they found were proposals for urban development, not for uses like a processing facility. It's sort of a folkloric problem that hasn't been documented.

Although DPD 32-2004 lists five proposals impacted by the proposed freeze, this situation has now been changed to four. This is since one of the five, an application for commercial, industrial and hotel use on land near the Niagara District Airport, was rejected by the OMB after the report was printed. In this case, the OMB upheld the position of Niagara-on-the-Lake and the region against this development proposal.

So now there is only the Deanfield Farms proposal, of the four projects identified by the regional planning department as impacted by the freeze, that is actually supported by any municipal government in Niagara. If this proposal were accepted, it would add greatly to the existing surplus of industrial-commercial lands in Niagara.

Two of the other projects do not yet have approval from municipalities. One is a residential expansion in Grimsby which the town has considered to be premature until the completion of its growth management policy. Another is a proposal by the town of Lincoln to expand the Beamsville urban boundary. The town, however, according to the planning department, has not proceeded with the application but rather has proposed that the expansion be part of a comprehensive review. There was a proposed rezoning of an auto recycling business. In this case, no decision has been made by the town or the region.

In conclusion, we are pleased that Niagara's good planning is complemented by the long-overdue intervention of the provincial government carried out through the Greenbelt Protection Act and the minister's zoning order. In other parts of the province, the notion that municipalities should stay within the designated urban limits is new and alien. Here, on our unique lands at

least, this principle has been accepted since 1981, although the case in Pelham shows it has not always been acted upon consistently.

We hope that the passage of Bill 27 and the subsequent decisions as a result of public consultation and provincial planning discussions will lead the way toward our mandated goal: the long-term protection of a significant provincial resource in the public interest, the irreplaceable Niagara fruit lands.

**The Chair:** Thank you very much. Our time is up. We don't have any time left for questions. We appreciate your presentation, and everything has been recorded.

Our next group is the Niagara Home Builders' Association, Stephen Kaiser and Paul Phelps.

**Mr Hudak:** On a point of order, Chair: I just wanted to bring up this point again. The home builders are on for 4 o'clock. It's about 10 to 4 now. The mayor of Port Colborne has been very courteous with his time. I'd like to hear from him. Could we maybe get him to fill in this gap until the presentation by the home builders? I don't mean to jump in front of the home builders, but I think they're OK with that. I understand the gentleman from the region of Niagara has been delayed due to an emergency and hopefully will still arrive. Chair, I wonder if I could beg the indulgence of the committee members to allow the mayor of Port Colborne a few minutes to make his presentation.

**The Chair:** Is that agreeable with the members?

**Mr Parsons:** If Niagara is still coming, are they aware that they're coming for much less time than they had put their proposal together for?

**The Chair:** No. He will only be entitled to a maximum of 10 minutes, and then we're on time, because the regional municipality of Niagara hasn't arrived. Are you referring to the municipality of Niagara?

**Mr Parsons:** Yes.

**The Chair:** They haven't arrived yet.

**Mr Hudak:** We're not taking his time; we're just asking if the mayor could step into this gap.

**The Chair:** It's the only time he could take, if the regional municipality of Niagara is not here, because right now we're just looking at the list. According to what I'm looking at, there are about 20 groups that are going to ask to make presentations. We have to decide. Are we going to say, "You are able to make a presentation," and the other one won't? The only reason that I'm ready to accept that, if the committee agreed to it, is to take the time of the Niagara region.

1550

**Mr Hudak:** Chair, it's hardly fair to Patrick Robson, the region of Niagara, who by no fault of his own has been delayed. I think all we're asking for is 10 minutes for the mayor of Port Colborne to make his presentation. With respect, when we get back on time, that's just 10 minutes additional.

**The Chair:** Mr Hudak, if the regional municipality is coming in, even if they are late, they are still entitled to their 20 minutes. We have to take that into consideration.



At the present time, the next group was to be the Niagara Home Builders' Association. Are they here?

**Mr Kormos:** If I can be of assistance, Chair, if you have a flight to catch, I can get a limo service to take you up to the airport, and the rest of us can stay till we—

**The Chair:** We were here on time. Everybody was here on time.

**Mr Kormos:** If you have a flight to catch, though, I can have you taken care of.

**The Chair:** Mr Phelps is here?

**Mr Hudak:** What happened to the mayor's time?

**The Chair:** He's going to have time at the end, then.

#### NIAGARA HOME BUILDERS' ASSOCIATION

**The Chair:** Mr Phelps, you have 20 minutes for your presentation. You can take the whole 20 minutes or leave some time at the end for a question.

**Mr Paul Phelps:** Ladies and gentlemen, thank you very much for the opportunity to address you today. My name is Paul Phelps, and I'm a past president of the Niagara Home Builders' Association.

Our members include builders, renovators, developers, suppliers, design professionals, engineers like myself, skilled tradesmen, most of whom both live and work in the Niagara Peninsula. We work where we play, and we play where we work.

I think I'm even a typical example of a large number of our industry: My great-grandfather was the first mayor of the incorporated town of Grimsby, my grandfather worked for a supplier to the agricultural industry, my father was a builder in Grimsby, and my first job was picking cherries and my second job was working in the greenhouse. I think that's typical of many of our members.

Members of our association play an essential role in the economic and social welfare of the Niagara Peninsula by providing vital jobs, building quality affordable housing, and practising smart growth land management throughout the Niagara region.

Implementation of Bill 27 and the decisions of the Greenbelt Task Force have the potential of having a severe impact on the housing and land development, and hence the economic well-being, of the Niagara Peninsula.

Let me first say that nobody is more concerned about the well-being of the Niagara Peninsula than our association. It's the beauty of the Niagara Peninsula that is one of the major attractions to our customers. Our membership agrees that there are many areas of our very unique peninsula that should remain green and be protected, as many of them already are through the Niagara Escarpment Commission, through the designation of tender fruit lands and through the viability of our farmers, our grape growers and our wine industry. However, we have three major concerns about the necessity of Bill 27 and how Bill 27 is being rolled out, and its potential implications and impact.

The first of these is speed and timing. We have a concern that the speed and timing with which the greenbelt protection bill was introduced was more due to political reasons, as an overly quick, overly reactionary response to the government's frustration in dealing with intense urban expansion north of the GTA and in the Oak Ridges moraine.

This type of swift broad-brush approach is not necessary to provide protection in the Niagara area. We heard from the past speaker that Niagara is doing a good job already in providing good stewardship of our lands. A better approach in our area would be to allow the time that's necessary for proper consultation and planning with various interest groups and the industries and the citizens and municipalities of our area to study where protection is really needed, where it's warranted, how it can be best implemented and what alternative infrastructure is required.

We have a very unique situation in Niagara in that, to a large degree, our current areas available for growth are bounded by Lake Ontario to the north and the Niagara Escarpment to the south. We are not facing a crisis in the Niagara Peninsula, and we don't need to apply crisis management to resolve it.

We are being told that Bill 27 will be implemented by the end of this year, although it is almost halfway through the year and the public input process has barely begun. We feel that forcing quick, reactionary decisions on Niagara, when they are not necessary, will polarize the various stakeholders in our area, instead of allowing them to explore and develop a made-in-Niagara solution which we can all agree on and rally behind.

Secondly, a broad-brush approach is not appropriate in Niagara. We are concerned that, again due to a perceived rush, a broad-brush approach will be used, as it may be viewed as the only solution available in the short term, when it isn't required, isn't realistic and doesn't meet smart growth principles.

From Grimsby in the west to Niagara-on-the-Lake in the east, the Niagara Peninsula encompasses and enjoys the diversity of very small towns and village areas, medium-sized vibrant urban areas and, of course, the city of St Catharines in the middle. Each of these centres has a completely different makeup, different geographical constraints, vastly different levels of infrastructure and different types of lands, industry and agriculture. Therefore, a broad-brush approach to such a diverse area is not warranted and will not be practical.

Thirdly, we are concerned that if a far-reaching greenbelt is implemented in Niagara, the proper planning and infrastructure will not be in place. Currently, the majority of our infrastructure, as I said, is located north of the Niagara Escarpment. Millions of dollars of taxpayers' money and development charges have been spent on infrastructure in the areas bounded by the Niagara Escarpment and Lake Ontario.

Our great concern is that if large amounts of lands are frozen in which areas of infrastructure are already in place, or planned to be in place, funds and changes in



policies will not be available to provide for infrastructure in other areas of the Niagara Peninsula where growth will have to be shifted. Schools, hospitals, sewers, water, hydro and transportation will all have to be shifted to areas where they don't currently exist. This will be expensive and require a lot of planning.

This new infrastructure will require new and major plans and policies to be implemented, and major funding will have to be provided. If proper planning policies and the method for providing this new infrastructure are not provided at the same time as the decision on the protection of lands is implemented, the supply of developable lands will not be sufficient to meet the area's demands, and the land and housing prices will skyrocket, which will defeat both Ontario's and Niagara's policy of providing affordable housing.

Also of great concern to our industry in this scenario is that the method of funding for new infrastructure may totally rely on development charges, because the funding will be considered to be growth-related, whereas in reality it will be due to a social decision made by the people of Ontario; that is, the preservation of additional lands for the future. If development charges increase dramatically to provide for new and expensive alternative infrastructure, then again, housing prices, which are directly affected by development charges, will also increase dramatically. The extra costs of funding new and expensive alternative infrastructure cannot be placed on the shoulders of the housing industry, but will have to be shared by the province's population.

Therefore, in summary, based on these three major concerns that I've talked about today, the Niagara Home Builders' Association has three recommendations.

First of all, slow down. Allow the proper time to let the people of Niagara, which includes the municipalities, the various industries or farmers, agriculture, landowners and the citizens of our area, provide the necessary input to ensure the proper areas of Niagara that require some form of protection receive it. If immediate protection and solutions are required in other areas of the province, don't implement the same timetable in Niagara. Trying to force a quick solution will only polarize our region.

Secondly, don't implement a broad-brush approach in Niagara. Our diverse makeup requires a well-planned, made-in-Niagara solution.

Thirdly, make sure that before any large amounts of Niagara lands are included in a proposed greenbelt area, the plans and policies for alternative growth and the funding formulas for the necessary alternative infrastructure are in place for the areas that growth will shift to.

Failure to ensure that these provisions are in place, and in place properly, will either cause housing prices to skyrocket or cause a severe negative economic impact on the Niagara Peninsula—or, worse, both.

Thank you very much for your time today.

1600

**The Chair:** We have enough time for three minutes for each party. Mr Hudak.

**Mr Hudak:** Thank you very much, Mr Phelps, for the presentation. I think you make some excellent points. I think you're right. There was a sort of political birth to this legislation just after the flip-flop on the Oak Ridges moraine. I think the government wanted to get out some bills to try to make up for that.

*Interjections.*

**Mr Hudak:** The members across are laughing at that, but I think it's pretty true.

**Ms Churley:** But that's a good thing.

**Mr Hudak:** The NDP likes that, but we have concerns—

*Interjection.*

**Mr Hudak:** You want to get into a debate. Chair, I'll be glad to get into a debate. We can debate until 10 o'clock at night on this one if you want to.

But you're absolutely right. There are three essential pieces that are missing: first, the framework to support our farmers. If you want to support the farmland, you need to support the farmer, and that's absent from this legislation. On a wing and a prayer, we're asked to hope that this comes down the road.

Second, you talked about the restrictions in the urban boundaries. A town like Lincoln is going to be hard-pressed to afford its infrastructure in the future if it doesn't have an opportunity to grow. What's the mechanism to try to remedy that for the municipalities in Niagara?

Third, without the mid-peninsula corridor to try to encourage growth in other parts of the peninsula, that's going to put even greater pressure on land prices and affordable housing in north Niagara and more pressure on the farmland.

What are your suggestions on how we could remedy that? Are there any changes that you see in Bill 27—perhaps a clause that asks that this legislation not take place until these provisions are in place? What's your advice?

**Mr Phelps:** That was one of my major points today: In Niagara we don't need to rush into this decision. We have done a good job of managing our land, and we have a lot of very complicated and diverse things that we have to look at. To do something quickly, just for the sake of doing it, is not the right thing to do in Niagara. We don't have a crisis here and we don't need a crisis solution.

**Mr Hudak:** That's great.

**Ms Churley:** Thank you for the presentation. You'll not be surprised to hear that I may disagree with some of your premises, although I do agree with some of your assertions around brownfields. The previous government brought in legislation but didn't make the resources and the funding available, as they did in the US, to help with that, and that's really important.

I have to question where your data comes from that protecting green space actually leads to higher costs of housing. When I look at, for instance, the development of new housing in unbuilt-up areas where you have to put in all of the infrastructure, where there isn't public transportation—all of the costs associated with that—the



housing prices are somewhat subsidized for various things anyway, as you know, but also increasingly higher because of that. I guess the question coming out of that, after stating my disagreement with you on some of these things, is, where are you getting your data on protecting green land—I'm sorry, I'm overtired today. I had a late night. I had a very late, good night. The question is, where do you get your data for that?

**Mr Phelps:** When I came in, one of the first things I looked at was a map, which I think was provided three or speakers ago, of the growth over the last 20 years in the Niagara Peninsula. When you look at that, there really hasn't been a lot of growth of our urban areas.

We are doing a good job of looking at brownfield development. My company, for instance, is developing a brownfield site in the heart of Grimsby right now, and we're working with the Niagara region. The Niagara region is providing policies and incentives to encourage that type of growth. I know that other rural members are also doing that type of development.

Brownfield development on its own will not be enough to provide for the demand on growth that we see. Already, just by the proposal of Bill 27, we're already seeing in our area land prices skyrocketing and people trying to anticipate what is going to happen and where the growth is going to be. That's just typical of what happens when you try to jump in and do protection without properly sitting back and planning for it.

**Mr Delaney:** I have a number of issues that should be fairly short. You say in one of your recommendations, "Go slow." What time frame did you have in mind?

**Mr Phelps:** I don't have a definite time frame, but I think that six months certainly isn't enough time for the stakeholders in Niagara to get together and come up with solutions.

I think we're doing a pretty good job already now, and if there are areas of concern the government has where we're not doing a good enough job in the region, the region, the municipalities and the various industries can resolve those issues. Our concern is that if it's done very quickly and just done broad-brush, then it's not going to serve anybody's interests. In the past our industry has worked well with the towns, the municipalities, the region and other interest groups to look at solutions. When we try to do things quickly, everybody becomes polarized and starts only looking after their interest.

**The Chair:** The time is up now. Thank you very much for your presentation. Everything has been recorded.

**Mr Phelps:** Thank you very much for your time.

**Mr Hudak:** On a point of order, Mr Chair: Just following up on the presentation by Mr Phelps and the previous one by PALS, they made a similar point that the region of Niagara and the municipalities are making efforts to define appropriate growth—I think PALS had some concerns about one in particular—but in defining their own urban settlement areas.

Just another request, if I could, to the ministry staff: If Bill 27 passes as is, how would a municipality create a

new urban settlement area or expand an existing one under the act? If possible, I would like to have the response to that for both the lower- and upper-tier municipalities with respect to Niagara or other parts of the province that are impacted.

**The Chair:** As you know, they don't have to give the answer today, but they will come back to us.

**Mr Hudak:** I know they work hard and they'll do their best.

## NIAGARA NORTH FEDERATION OF AGRICULTURE

**The Chair:** Our next presenter is the Niagara North Federation of Agriculture, Torrie Warner or Cathy Mous.

Thank you for taking the time to make a presentation to the committee this afternoon. You have exactly 20 minutes. If you take the whole 20 minutes, there won't be any time left for questions. It is up to you to either take it or leave some time at the end. You can proceed.

**Mr Torrie Warner:** Thank you. I'm Torrie Warner, a farmer representing the Niagara North Federation of Agriculture. We have 1,100 farm family members.

The mission statement of the federation is "dedicated to achieving economic and social viability for all Niagara agricultural producers through strong effective lobbying and communication efforts."

There is a handout too. Have a look; I'm on page 2 right now.

The vision statement is, "To produce an economically healthy, secure agricultural industry in Niagara that will encourage farm renewal through a new generation of producers"—such as myself.

The value statement is, "will maintain a strong, united, professional image to our members, consumers and elected officials."

Page 3 is pretty straightforward, so I won't go through that.

Page 4—I'll just go through this. The Niagara North Federation of Agriculture is an agricultural organization with over 1,100 farm family members. The mandate of the federation is to promote and protect agriculture in the Niagara Peninsula. Niagara offers the most diversified area of food production in all of Canada, and agriculture has proven to be the economic mainstay in Niagara.

### 1610

The directors of Niagara North have reviewed the proposed Greenbelt Protection Act and would like to comment on the draft report.

The agricultural community of Niagara understands the need to protect our agricultural land base, and we believe we have been team players in the implementation of many programs involving the protection of Niagara's agricultural industry. Our directors work closely with the region of Niagara and have completed several studies, including *Securing a Legacy for Niagara's Agricultural Land: A Vision from One Voice*, and the *Regional Agricultural Economic Impact Study*.



The agricultural industry in Niagara generated in excess of \$511 million in gross farm receipts, \$400 million in direct sales, \$562 million in indirect sales and \$832 million in induced sales. Agriculture in Niagara had a \$1.8-billion effect on the Niagara economy. This is something to be proud of.

There has been some concern about the decrease in the number of farms. Between 1971 and 2001 the number of farms decreased by 1,694 farms. There has been a continued trend toward larger farms due to economies of scale; therefore, an assessment of the change in farm acres is more accurate. Between 1976 and 2001 almost 20,000 acres of farmland went out of production. This is a 7.8% decline, as compared to the 15% decline in all of Ontario.

According to the regional agricultural impact study, June 2003:

“Out of 49 regions, counties and districts in Ontario, Niagara ranks 38th in geographic size. However, with respect to agriculture, it ranks 25th in total area farmed, 11th in the number of farms and fifth in gross farm receipts. It ranks first in value of average gross farm receipts per acre. The average gross farm receipts in Ontario is \$674 per acre,” in southern Ontario almost \$1,000 and in Niagara \$2,195 per acre.

Should Niagara farmlands be protected? Definitely. Should the province of Ontario help protect the farmlands of Niagara through promotion programs, development of infrastructure and the development of a made-in-Niagara policy? Definitely. Should the farmlands of Niagara arbitrarily be frozen under the Greenbelt Protection Act? Definitely not, unless the conditions listed below are incorporated into the act.

Farmers are stewards of the land and will continue to protect the land providing it remains a viable industry.

The vision of the Niagara North Federation of Agriculture is to produce an economically healthy, secure agricultural industry in Niagara that will encourage farm renewal through a new generation of producers. You can freeze the land but you cannot force people to farm it. It has to be mutually beneficial or the whole industry will die.

One of the visions of the Greenbelt Task Force is to sustain and nurture the region's agricultural sector. Their goal is to enhance quality of life by performing an array of functions across the region, including preserving viable agricultural land as a continuing commercial source of food and employment, recognizing the critical importance of the agricultural sector's prosperity to the regional economy. How will the quality of life be enhanced for food producers in Niagara if you dictate what they must produce on their land? Will there be compensation for those who cannot make their frozen land viable? If the agricultural land is no longer viable, will it still be preserved, and why? What rights will the farm owners have after their land is legislated?

We challenge the government of Ontario to work with the farmers of Niagara, not dictate to us. We have the experience and knowledge to make the farmland of

Niagara very profitable, but we lack the resources and research needed to reach this peak. We are willing to work with the government in the development of programs that will enhance the agricultural community. Freezing land is a band-aid solution to a growing problem. If the government is serious about preserving viable agricultural lands, then help us to produce our products with pride and provide us with the tools to make this land productive and prosperous.

The Niagara North Federation of Agriculture will support the proposed Greenbelt Protection Act, Bill 27, under the following conditions:

The land protected under the act is properly defined with a definite boundary, not just land that is categorized as good grape-growing land, and that this definition be science-based—that's the land immediately above the escarpment, and there doesn't seem to be a definite boundary for that; land scientifically determined unviable should not be placed under the Greenbelt Protection Act; protected farms be able to follow the same best-management practices that others throughout the province must follow—for example, the use of pesticides; all training and tools be made available so that farms in protected areas are not at a disadvantage; any and all land declared under the Greenbelt Protection Act be classified as vulnerable to road salt, therefore forcing municipalities, regions and the province to follow the Code of Practice for the Environmental Management of Road Salts—the problem here is that if you drive along the QEW, you will see probably two rows of trees that are without flowers because of the road salt; research dollars be provided to the Vineland research station so that research can continue in Niagara—it is essential that we continue publicly funded research so that the farms of Niagara can continue to prosper; irrigation rights be protected and water-taking for irrigation remain a normal farming practice; drainage programs be implemented so that Niagara farms can remain viable; compensation be given for the loss of farmers' equity; compensation for environmental restriction on an annual basis; a clear statement that farmlands are not open to public access; the public benefits of Ontario agriculture, such as carbon sinks, food security and support for rural communities are recognized; there are no constraints on value-added commodities and agri-tourism, such as taxation; agricultural assessment of value-added facilities are not classed as industrial assessment; land severances of surplus dwellings remain so that farms can continue to grow without the threat of having to become landlords in the process—we're food producers, not landlords, is the meaning there; consistent application of the Farming and Food Production Protection Act, including a clearly defined dispute-resolution process; that the long-term economic viability of farm operations be ensured so that future generations can continue to farm the Niagara lands; the task force's recommendation that a provincial task force on agriculture be created to develop agricultural policies that will ensure a viable agricultural industry and that at least one representative be from Niagara.



**The Chair:** We have exactly nine minutes left, so that will be divided into three.

**Ms Churley:** Thank you very much for your presentation. You have a series of recommendations and we don't have time to go through each of them. I agree with you on the road salt, by the way. I'm so glad you raised that. I believe there is a growing awareness, both urban and rural, that road salt is a tremendous environmental problem.

I want to get back to an issue that's come up time and time again this afternoon, and that's land severances. I'm sure you will want to continue on.

**Mrs Van Bommel:** No, you go right ahead.

**Ms Churley:** I'm still trying to understand what's going on here. I know the thinking behind this legislation is to protect agricultural land. The concern is that once you start severing, you no longer have a guarantee that that land is going to be preserved for agricultural use, yet you are proposing that severance continue to be there for farmers. I guess my question would be—and perhaps you sort of answered it in another part of your brief where you talk about, “Freezing land is a band-aid solution to a growing problem. If the government is serious about preserving viable agricultural lands, then help us to produce our products with pride” etc. Isn't it a problem that one of the ways farmers can continue to farm is to be almost forced into severing land to be able to continue farming? If you had more supports, would you not then be able to accept this component of the legislation?

**Mr Warner:** To answer the question, I really oppose this legislation, because—I'm not sure how you say it—I should be able to pay fair market value for my land. Right now, it appears as if we can't do that without this legislation. So in that sense, yes, I support what you're saying. I personally tend not to support severances for an income, but sometimes that has to happen. Does that answer your question?

1620

**Ms Churley:** I understand what you're saying, that people are sometimes forced to do that for the income. They financially need to sever the land.

**Mr Warner:** Right, and we're not in the business of being a landlord. So if you purchase a 20- or 25-acre farm and there's a house on it, what do you do with the surplus dwelling? That's the point that we're stating here.

**Ms Churley:** Yes, I understand. What needs to be put in place so that doesn't have to happen?

**Mr Warner:** I'm not sure what to suggest. If a 25-acre farm is viable, then that's fine; we don't need to sever the house. But if I can't farm on my 30 acres, I need to purchase more land. But we can't support two families on that, hence we don't need two dwellings. If I rent out the house—I'm not a good landlord—I'm going to have problems. Soon the equity in that piece of property that I purchased is no longer there, hence the bank would foreclose, and I'd lose the property and the farm.

I guess I'm not proposing a solution; I'm just proposing why we want what we do.

**Ms Churley:** You're saying that there's a problem here, and this may not be the solution. But I think I would still say that there is an issue that we keep hearing about, that farmland sometimes gets lost to developers. That's what this is all about, to try to stop that.

**Mr Warner:** That's right. Developers are willing to pay a lot more for land than a farmer.

**Ms Churley:** Exactly. So that's a problem here.

**Mr Warner:** Yes, that's right.

**Mr Arthurs:** Let's explore here for a minute, because I know one of the critical issues of this whole process continues to be and has been the capacity for farming to remain a viable business. A number of your comments and recommendations for support for legislation of any sort revolve around the need for either compensation, research dollars, training and tools, farmers' equity or environmental restrictions.

Just take a couple of minutes, if you would, in the time available and explore with us the types of things that farming is going to need, either specifically or generally, in order to stay viable over the long term, with or without this type of legislation.

**Mr Warner:** In short, we need an income. That's pretty blunt, I guess.

With regards to research, research done at Vineland pertains to Niagara. There are certain kinds of research that can be done in the States or other areas that will still pertain to Niagara. But, for example, if the breeding program is not done at Vineland and the varieties are not evaluated at Vineland or in Niagara, we don't know whether they will survive our winters, the humidity in the summer, the rainfall—that kind of stuff. So that needs to be done here. We would like to see it done publicly. We do support some research at Vineland as growers, but—

**Mr Arthurs:** You started off saying, “We need to have an income.”

**Mr Warner:** That's right.

**Mr Arthurs:** Can you just expand on that in the few seconds we have? That's a common theme. It's a simple statement, but I don't think it necessarily reflects the breadth of what you're saying in any way.

**Mr Warner:** OK. We either need to, I guess, increase our productivity to be competitive with other areas where product is coming from, increase the price or reduce the costs of our input. It's pretty straight math. If you have \$200,000 worth of product and \$150,000 worth of expenses, you either need to increase the gross income, reduce the expenses, or both to increase your income. If we do that through increased productivity through research, that's one way of doing it. Increasing productivity through irrigation is another way of doing it. Losses such as from road salt, frost damage from berms, restrictions imposed by hydro, wildlife, whatever it is—there are a lot of things that reduce income. Weather is another one, but I don't think you guys can change that.

**Mr Arthurs:** That's a federal responsibility.

**Mr Warner:** OK. I'll write my MP, then.

**Mr Hudak:** Thank you both, Torrie and Cathy, for the presentation and for being here at short notice. I'm glad you had the chance to put together a good presentation.

I voted against this legislation. I think I'm the only one here at the table who did. Greenbelt's great in concept, but a greenbelt on its own is not a protection device. In order to make a greenbelt work, you need support for the farm, you need support in transportation and you need support for local municipalities. One of the challenges here is—I think Mayor Bill Hodgson said it earlier—that the fruit belt has disappeared and it's become the greenbelt. You're trying to marry sort of a park-land approach with farming that's a business, and we can't lose track of that.

I'm very pleased that you brought forward a series of specific items that can help support farmers and hopefully will be taken into an agricultural framework. I'm going to ask you to give me more detail on a couple of these items. First, you talk about agricultural assessment of value-added facilities, not industrial assessment, and part of that was in the Beaubien report. Could you give us some examples?

**Mr Warner:** I think some of that was mostly in regard to the winery issue. There's also an example, I believe from Georgian Bay, about cold storages. I don't know of any other examples myself—

**Mr Hudak:** There's sugar shacks, I think.

**Mr Warner:** Maple syrup; yes, that's right. It's things like this that the government seems to encourage us to do and then taxes us after we've done it. We didn't realize that was going to happen, and it takes the profits out again.

**Mr Hudak:** What I'm worried about is that some of these things will be left on the wayside. Some things that are in support of agriculture may be forgotten in the definition of these things. If you have a chance later on to give more examples, you can always write to the committee or to me and I can bring them forward.

**Mr Warner:** OK.

**Mr Hudak:** The other one I wanted to ask you about was where you say "compensation for environmental restriction on an annual basis."

**Mr Warner:** I didn't actually write this, but I assume it has to do with nutrient management. Cathy is our secretary here—I'm a farmer—so the floor is hers.

**Ms Cathy Mous:** I think if we ever run into a problem where we end up being environmentally controlled, then if we have to give up some of our land as watersheds, as berms, we have to be compensated because we can no longer use the land.

**Mr Hudak:** What I thought you were getting at is in some European countries—I think in the States too—some farmers in environmental areas actually get compensation for their environmental stewardship, and I thought you might be going down that path. What do you think of that notion? If farmland in Niagara is bound by a minister's order to stay in agricultural production, should there be compensation for your help with making the greenbelt a success from an environmental point of view?

**Mr Warner:** I think so. Somewhere I read, and I don't know if it was in here, that if it is for our personal benefit, then we would look after it ourselves, but if it's

for the benefit of the public, then the public purse should pay for that, and the public purse is the government.

**Ms Mous:** One thing you have to realize is that if you turn our food-producing land into parks, we will no longer be able to produce food, and then you will be importing. Then you are going to run into a lot of problems because a lot of things that come across the border are using pesticides that we cannot use in our own country, but you will be consuming foods that are full of it.

One other thing I just wanted to say about income is, there's an incredible increase of off-farm workers. I have to work off the farm to support the farm. I would like to be just a farmer and I would like my kids to be farmers, but it's not going to happen.

The land severances—it used to be in a retirement. I have no retirement right now, my husband has no retirement, and that was how it was looked upon. Now, if we were financially viable, we could plan our own retirement; we're not at this point.

**The Chair:** Thank you very much, Ms Mous and Mr Warner, for your presentation. Everything has been recorded.

1630

## THE ONTARIO GREENHOUSE ALLIANCE

**The Chair:** The next presenter will be the Ontario Greenhouse Alliance, Rej Picard and Antoine van der Knaap.

**Mr Rej Picard:** A Frenchman and a Dutchman. That's all you need to finish off your meetings, Mr Chairman.

**The Chair:** He says he's a francophone. We have instant translation here, by the way.

**Mr Picard:** On n'en a pas besoin, merci.

Thank you very much for having us here today. I am a flower grower. Toine is a vegetable grower. We are here representing the Ontario Greenhouse Alliance, which consists of all vegetable and flower growers in Ontario. It's been a long day, and in order not to repeat many of the points made by some of the previous speakers, I will only say that we concur in the presentations of:

Mayor Hodgson, in whose community many of our members grow;

Ms Zimmerman and Mr Troup, who made reference to the agricultural task force report, of which I was a member, and to the agricultural impact study, of which I was also a member, and I would ask that both those documents be part of the public record if they are not already, in terms of this meeting; and

Dr Irwin Smith, of whose organization I am also a member and have also served as president.

Just to summarize, we are particularly in agreement with the requests of previous speakers that appropriate subcommittees be established and no unilateral ministerial decisions be made. Farming should be defined by its processes. Greenhouse crops grow because of light and temperature. We call that farming. Dr Smith referred



to greenhouses as having recognized agricultural status under many provincial and federal statutes. Under no circumstances can we accept the change of status as a currently designated land use. We agree with the remainder of our agricultural community that the key to any policy changes is flexibility and diversity in the use of the agricultural land.

**Mr Antoine van der Knaap:** My name is Antoine van der Knaap. I'm from St David's Hydroponics, and I'm representing the pepper board in Leamington. I'm here to confirm what Rej just talked about. He's a much better speaker than I am.

**Mr Hudak:** Don't be shy.

**Mr van der Knaap:** Shy is a good thing most of the time.

**Mr Picard:** We've probably allowed lots of time for questions if there are any from the committee. We'd be pleased to answer any questions specifically to the greenhouse industry.

**The Chair:** Definitely. We have at least 15 minutes at the present time, and the first question would come from Ms Churley.

**Ms Churley:** I have a question around pesticide use, which I suppose is not relevant to the issue before us today, but it's been brought up a couple of times and it's an interest of mine: just a clarification of the difference in environmental rules here and in the US, for instance, and what level of pesticide use there is these days.

**Mr Picard:** They have access to a lot of things we don't have access to. One of the things that a group like Flowers Canada and OGVG—the Ontario Greenhouse Vegetable Growers—do is try to apply to the federal ministries for minor use registrations to allow us to use pesticides that we know are being used by our competitors in the United States and in other countries, and possibly being used in other agricultural industries even within Canada, but cannot be used for a specific greenhouse crop. There are a number of those, and it is a problem. We're trying to reduce pesticide use by having, as Dr Smith mentioned, recirculating systems in the greenhouses. Most of our pesticide use and fertilizer use is done through those irrigation systems, so that the only thing that's lost is the actual evaporation by the plant. Everything else goes back in, gets remonitored, recirculated and used again. It's as efficient a system as we can find.

**Ms Churley:** I have no further questions, simply because I think your position is similar to some of your colleagues today. I just want to take this opportunity to thank you for coming forward on such short notice.

**Mr Picard:** I will comment on you saying our position is the same as many of our colleagues. The agricultural impact study said we were presenting that document as one voice. That is the voice of greenhouses, of cattle, of poultry, of tender fruit, of grape—PALS was at the table. That's why I said it's important that that document become public record, because listed on the back of that document were all the participants. I think

it's important that people know who those participants were.

**Ms Churley:** You had a response?

**Mr van der Knaap:** Yes. I would like to add that especially in the vegetable greenhouses we use mainly biological pest control. That means we use maybe 1% insecticide. Certain flower growers in the peninsula are now going in that direction also. They started in the vegetables about 20 years ago, and we are highly successful. All the flower growers who are doing it at the moment are learning a lot, and they're getting there also. It's a very valuable point, I guess.

**Ms Churley:** Thank you very much.

**The Chair:** Mr Parsons and Mrs Van Bommel would like to ask questions.

**Mr Parsons:** We do beef and springer cattle, although with the current prices they are more pets than commodities around the place. I know the effect of urbanization on our operation, but I don't know much about yours. What effect does it have on your operations if houses are developed around you?

**Mr Picard:** Certainly, we have our original operation that we started in 1959 in the town of Grimsby, which right now sits as a nonconforming use within what has been designated as a residential area. I probably take two or three phone calls a week from residents on the other side of our greenhouse that a window is squeaking or there's a light on or they hear the boiler starting. I have to be honest with you: It is a nuisance. But we make do. We do everything possible to be good corporate citizens, if you will, within that area. If we had a choice, would we want to be there? No. I wish we were out in a normal agricultural area and able to operate in that environment. But unfortunately when you are there, and over a period of over 40 years they surround you with residential—it would not be my choice to move into that neighbourhood.

**Mr Parsons:** I would think that of all the types of agriculture, yours would be the best as a neighbour. I'm not surprised, but I find that interesting.

**Mrs Van Bommel:** Just two questions. One, I'd like to know how many acres altogether are under glass in this area.

Two, when you're dealing with the finished pepper plants, how do you handle the material when you're finished? It's not the same as flowers; you have vines and leaves and stuff when you start over again. I've seen these plants; they grow like trees. How do you handle that, where do you go with that and how do your neighbours respond to what you do with that material?

**Mr van der Knaap:** That question is specifically for me, I guess. During the season, all the leftover leaves and bell peppers go to our local farmer, who feeds them to the cows. He's really happy with it, because in the winter they always have fresh leaves to eat. At cleanout we transport the vines to our other location and compost them there. Plastic materials go to the dump at the moment. But what you see, especially in such a huge greenhouse area, are recycling types of businesses start-



ing up, shredding the plastic and recycling everything. That's where it's going very quickly.

**Mrs Van Bommel:** I'm just wondering about the acreage question.

**Mr Picard:** I was just getting that information for you. In Niagara we have about 265 acres of greenhouse and flower production, and in Ontario it's in excess of 700 acres of production. I would add that of that value of greenhouse production in Canada, I think about 60% of all the dollar farm gate value rests in Ontario, between Fort Erie, primarily Niagara, and Leamington as a secondary area. They are stronger in vegetable production, and we in Niagara are bigger in flower production.

**The Chair:** I will move to Mr Hudak.

**Mr Hudak:** Thank you both for the presentation, and congratulations. Mr Picard is also on that committee you've heard about from many presenters today. They've done an outstanding job in bringing together various commodity groups, which don't always see eye to eye on the issues, to bring forward one voice.

**Mr Picard:** It was interesting.

**Mr Hudak:** Actually, remarkable progress has been occurring here in Niagara.

This legislation now sort of leaps ahead. One of the challenges I'll bring up when we get into particular clauses in the bill is that significant power now comes to the Minister of Municipal Affairs's office in terms of granting exemptions, defining where urban boundaries may be, defining urban uses and such. It takes it away from the local municipality. What's your degree of confidence in the stewardship you've seen from the politicians here in Niagara, both at the region and locally, in remedying the balance between agriculture and development?

1640

**Mr Picard:** Well, we feel we're making progress. We took the agriculture task force report and presented it to all the municipalities individually. I was at a meeting on Tuesday where we presented it to the region's planning committee, where it was unanimously endorsed for presentation to the regional council of Niagara, and we believe the regional council of Niagara will be fully supportive in any assistance and support that we need in any provincial presentations etc. So we think it is definitely a regionally supported document now.

**Mr Hudak:** The other two points—I'm not sure how I'm doing on time there, Chair, but with respect to the question I brought up with Flowers Canada also, I am concerned that you may find greenhouses somehow defined out of agriculture, which would then prohibit any kind of growth here in the peninsula or any part of the greenbelt area. Perhaps you could comment on that.

Secondly, for the industry in general—and this is a very general question—what needs to be in place for the industry to be successful in a municipality in terms of municipal servicing, the type of land that you use, or are greenhouses pretty flexible in terms of, whatever land you want to place them on, they'll work out?

**Mr Picard:** That's a lot of questions, Tim.

**Mr Hudak:** I know. I'm a curious fellow.

**Mr Picard:** Certainly in terms of value, if you look at the impact in Niagara, the study said there was a \$1.8-billion industry in Niagara with spinoff of farm gate, and 42% of that was the greenhouse industry, which has grown considerably. I believe in the last report, in the early 1980s, it was 19%. Now it's 42%, which is significant, and it has the largest impact financially in agriculture in Niagara.

If we were to lose our land status, it might destroy the industry here. People have talked about, "Well, move south in the peninsula." There is a five-degree ambient temperature differential there, which in itself would mean very high energy cost increases, which is a big part of what we do. Access to the labour market might be a little more difficult without the infrastructure to support that; just having gas lines and hydro lines and road access. So if that plan is there and it's to be done in conjunction with the mid-peninsula corridor and it's a 25-year plan, I'm sure as an industry we can adapt and we can start thinking that way, but it can't be black and white. You can't say we're here one day and "You can," and the next day, "You can't any more." That would be disastrous.

We've proven to be a successful, self-supporting, good corporate citizen municipally, provincially and federally. We haven't gone out asking for a lot of hand-outs. We think we've done a good job of doing what we do, and it would be a shame to cut us off from that.

**The Chair:** Very good. Merci bien, Monsieur Picard. Thank you very much, Mr van der Knaap.

**Mr Hudak:** No Dutch?

**The Chair:** No, no Dutch. Thank you very much.

**Mr Hudak:** The French was very good.

## CITY OF PORT COLBORNE

**The Chair:** As agreed previously, we have the mayor of Port Colborne here. I have to apologize, but I had to follow my agenda. Your Worship, we have 15 minutes available for you.

**Mr Ron Bodner:** Hopefully I won't take that much time. Thank you for your indulgence, and sorry to hold you up after a long afternoon. Certainly the city of Port Colborne is not, as it stands now, in this greenbelt legislation, but I think we are probably part of the solution to it.

Just before I get into my prepared speech, I feel like I'm a little part of the solution here, because as well as being a mayor, I also have a market that I sell tender fruit in, which I buy from Niagara-on-the-Lake. I sell greenhouse vegetables, I sell flowers, and heaven knows our family drinks enough wine. I think we could keep a small winery going.

We've certainly heard today that we have to save the farmer as well as the land, because if all we have is a park, the peaches I'm selling are going to be from Chile or California, and I certainly don't look forward to that. So I'd certainly like to stress that.



Thank you very much for the opportunity to speak to you today about the benefits of the mid-peninsula transportation corridor, newly termed the Niagara/GTA corridor, and its relationship to the proposed greenbelt legislation.

Port Colborne is a vibrant municipality that has worked extremely hard to attract new industry and tourism. We are internationally represented by companies such as Jungbunzlauer and Smucker's. We also boast a number of local, long-standing industries which provide employment to many residents of Niagara. Our festivals are recognized as being some of the best in Ontario, and Port Colborne is rapidly becoming a choice tourist destination. I have also met with the mayors of Welland, Pelham, Wainfleet and West Lincoln, who have offered their full support to this corridor, and I speak today on their behalf as well on this corridor.

In order to continue the growth, it is believed that the province needs to support the regional municipality of Niagara's initiative to construct a new east-west provincial highway south of the Niagara Escarpment, located between the cities of Welland and Port Colborne.

In 1998, the provincial government completed the Niagara Frontier Gateway Study to address long-term highway improvements in Niagara. These highway improvements, and in particular the mid-peninsula corridor, are critically important, given that: the Queen Elizabeth Way has been identified as a primary trade corridor with the US and Mexico as a result of NAFTA; the United States government is moving to meet its transportation challenges by approving a \$218-billion, five-year Transportation Equity Act for the 21st Century to fund interstate highway improvements which parallel highway expenditures on the Canadian side and to facilitate free trade; the twinning of the Peace Bridge between Fort Erie and Buffalo will result in an increase in vehicular traffic; the Ministry of Transportation reports that highway travel demands will increase significantly in the future and that the existing Queen Elizabeth Way from Hamilton to Niagara Falls will become deficient as early as 2011; the corridor will address a range of growth, economic, community development, tourism and transportation issues to the city of Port Colborne, including the potential positive impacts of diverting truck traffic travelling between western Ontario and New York state off the Queen Elizabeth Way.

Provincially approved local and regional initiatives have for some time included the mid-peninsula corridor as a strategic objective for a number of reasons, including conserving tender fruit and grape land resources in proximity to the Queen Elizabeth Way, supporting community growth and development south of the Niagara Escarpment, and providing transportation systems which are environmentally sensitive and energy-efficient. I think here we're talking about a corridor, not necessarily a highway, which could include rail also in this corridor.

Recently, the planning services committee of the region of Niagara prepared a report with respect to this

matter. I would like to quote a portion of that report. I also sit on planning at the region.

"Transportation improvements are viewed as being key to the redirection of growth in Niagara. In particular, success of the 'Grow South' approach may well depend on such transportation initiatives as the extension of Highway 406 and the development of a mid-peninsula corridor. The regional policy plan has been approved by the province and growth in the southern part of the region is an integral part of that plan. This could assist in focusing economic development in those areas of the region that are not affected by the proposed greenbelt legislation and zoning order. The mid-peninsula corridor is an alternative to widening the Queen Elizabeth Way and is important in that context as well as the redirection context. Emphasis should be given to this project."

That's the end of the quote.

The region of Niagara is a valuable asset to the province with its agriculture and tourism draws. It is the firm belief of the municipalities within the region of Niagara that the construction of the mid-peninsula corridor will serve a dual purpose. The first will be to ensure that our tender fruit and grape land resources are conserved, allowing for those industries to grow. The second benefit involves our viability on the world markets. Port Colborne has the geographic luxury of being in very close proximity to the Great Lakes shipping lanes as well as rail access. The addition of a mid-peninsula corridor would serve to enhance our competitiveness in attracting business to our area, which in turn can be of benefit to the residents of the regional municipality of Niagara, and particularly the citizens of Welland, Port Colborne, Pelham, Wainfleet and West Lincoln.

I thank you for your time and urge the province to take whatever steps necessary to study the benefits of the mid-peninsula transportation corridor with an emphasis on its importance to growth, the economy, community development, tourism and transportation issues and its impact on the proposed greenbelt area.

1650

**The Chair:** Thank you, Your Worship. Would there be any questions? We could have about two minutes each.

**Mr Parsons:** Just a quick question. Could we get a copy of that? That was a well-thought-out presentation.

**Mr Bodner:** Yes. I'm going to e-mail it. I have a card and the e-mail. I've brought one, but I've marked it up quite a bit.

**The Chair:** It's also going to be in Hansard.

**Mr Craiton:** Thank you, Mr Mayor. It's a pleasure to have you here.

Just for the record, I have supported the mid-peninsula corridor. I know Tim, in his unique way, brings it up regularly at Queen's Park. I supported it when I was on city council and I do believe in it. I think it's a great opportunity. Your comments are well put. Certainly there's a process, it has been explained to me, that we're obligated to go through. I'd like it to go quicker. Every opportunity I have, I regularly mention it to the Minister

of Transportation. As you said, it is a real golden opportunity. Although it may, on the surface, appear it doesn't relate to what we're talking about, it does in fact. So I really appreciate you taking the time to come up here and share it with the committee.

**Mr Bodner:** Thank you. I think it's a piece of the puzzle. It's not directly there, but it's one piece of the puzzle.

**Mr Hudak:** Thank you, Mayor Bodner, first for your patience. Thanks to the members of the committee. I'm glad it worked out and we were able to bring this important point forward.

You're absolutely right. The mid-peninsula corridor is actually an environmental solution that helps support the greenbelt. I think if we want the greenbelt to be successful, we need to move ahead with the corridor as soon as possible, just like you said in your presentation.

Kim is right: I've brought this up in question period a few times, and I think the minister is probably tired of hearing it from me, but I think your presentation on behalf of the city of Port Colborne and the other municipalities that you mentioned helps to demonstrate why this project should become more of a priority than it currently is.

I appreciate your points too, which I think help illustrate that Niagara has taken a very region-wide approach to the greenbelt issue, where a mayor from a community that is not impacted by this legislation still wants to see the fruit land protected and is an avid participant.

Let me ask you another question. You talked about the mid-pen corridor. Do you want to make any presentations on Highway 406 as well and how that can support development in southern Niagara?

**Mr Bodner:** If you're trying to take the pressure off those tender fruit lands—and I agree; I think that's the goal here. If we are going to force development or suggest that development go south, then we do need the transportation corridors to handle that development and make it more attractive for development to move that way. The 406 into Port Colborne would fit in nicely with the mid-pen.

**The Chair:** Ms Churley?

**Ms Churley:** I have no questions. Thank you very much for coming and presenting today.

**Mr Bodner:** Thank you for your indulgence.

**The Chair:** Thank you very much. Just for the record, the mayor is Mayor Ron Bodner.

Once again, thank you very much, everyone. If I could have a motion—

**Clerk of the Committee:** We don't need a motion.

**The Chair:** If I could see Mrs Van Bommel, Ms Churley and Mr Hudak for a minute.

Due to the number of witnesses who want to appear, we'll have to add some days. What we're looking at for the present time is the 31st and the 2nd in Toronto.

**Clerk of the Committee:** The 31st was already included as a public hearing day.

**The Chair:** But when the motion was brought in the House we only said the 14th, the 17th and the 21st.

**Clerk of the Committee:** But the subcommittee agreed to use the 31st if needed, and it was included.

**The Chair:** Now we have to add the 2nd and clause-by-clause on the 7th.

**Ms Churley:** Can I get clarification? I'm not quite sure what you're saying. A motion went through the House, the subcommittee met and we have days set aside. Are you suggesting that because of all the extra requests we actually ask for more days to be added on for hearings?

**The Chair:** That's why I want to bring it up right now. Otherwise, I'll have to call a subcommittee meeting on Monday morning. If we agree here, we don't have to call the subcommittee meeting on Monday morning.

**Clerk of the Committee:** I think the issue is that the deadline hasn't passed yet, so people still have a chance to call in and there aren't enough slots to accommodate—

**Ms Churley:** But I understand the process is such that when you set aside a certain number of days for hearings and they get filled up, then that's it.

**Clerk of the Committee:** That's the committee's decision, though.

**Ms Churley:** I know it's the committee's decision, but that's the normal process.

**Clerk of the Committee:** In that case, I could probably send you the list so that you can select.

**The Chair:** Yes. Either she sends you the list and we select, or we add the two extra days: the 31st and—

**Clerk of the Committee:** I wouldn't include the 31st, because that has already been included as a public hearing day.

**The Chair:** Right; the 2nd, then.

**Ms Churley:** I'd be interested in what the other subcommittee members have to say about extending the deadline. Frankly, if we're going to have that discussion, I'd prefer to try to do it on Monday. I don't have my up-to-date calendar in front of me and I know I've got a very busy schedule coming up. Remember what we went through at the subcommittee meeting just trying to find these days. I expect we would all have to look at our calendars.

**The Chair:** Can we meet at 10:15 on Monday, then?

**Clerk of the Committee:** That's just a subcommittee meeting?

**Ms Churley:** Just the subcommittee to discuss whether or not we should extend the hearings. Then would we have to go back to the House for an extension?

**Clerk of the Committee:** Actually, we're not time-allocated, so we can meet on our regularly scheduled meeting days, which are Monday and Wednesday. So we just keep pushing back when we actually do clause-by-clause.

**Ms Churley:** Perhaps we'd better have the subcommittee meeting, then. I sound like I'm speaking for the government here, but I'm not. There were some constraints—

**Mr Craiton:** You're official now.

**Ms Churley:** I'm official. We'd better meet, because we were trying to accommodate the government in this



case in terms of getting this back to the House, frankly. I don't really care. I think if people want to be heard, they should be heard, but, to be kind here, that was part of the issue.

**Mrs Van Bommel:** I was just going to suggest that maybe we could reduce each presentation by even five minutes, so we give them all 15 and we could add a few in there that way.

**The Chair:** That's not enough. We will already have to reduce it down to 15 minutes instead of 20.

**Mr Hudak:** Mr Ouellette is the usual member of the subcommittee, so I can't pretend to speak for him, but as you know, I have some serious concerns about the legislation and other activities that I think should support the legislation that are not in place. I, for one, think it's

important for us to hear those other deputations and would be very pleased to attend future meetings in order to do so. So if you want to get together again for subcommittee come Monday, we'll make every effort, but I do believe, on principle, that we should be open to the list of deputations and do additional hearings.

**The Chair:** Can each subcommittee rep call Tonia on Monday morning to let her know?

**Ms Churley:** Can I just say that I can make myself available for the subcommittee meeting and, for the record, would be supportive of continuing on with the hearings to hear from everybody. It's a matter of scheduling, which I think is going to be very difficult.

**The Chair:** OK. The hearing is adjourned.

*The committee adjourned at 1659.*

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## CONTENTS

Friday 14 May 2004

<b>Greenbelt Protection Act, 2004, Bill 27, <i>Mr Gerretsen / Loi de 2004 sur la protection de la ceinture de verdure</i>, projet de loi 27, <i>M. Gerretsen</i>.....</b>	<b>G-279</b>
Town of Lincoln.....	G-279
Mr Bill Hodgson	
Wine Council of Ontario.....	G-281
Ms Linda Franklin	
Grape Growers of Ontario; Ontario Tender Fruit Producers Marketing Board .....	G-285
Ms Debbie Zimmerman	
Mr Len Troup	
Flowers Canada (Ontario) Inc .....	G-288
Dr Irwin Smith	
Clear the Air Coalition.....	G-291
Mr Rob Burton	
Town of Niagara-on-the-Lake .....	G-294
Ms Austin Kirkby	
Hamilton-Halton Home Builders' Association.....	G-297
Mr Fred Toy	
Mr Mike Foley	
Preservation of Agricultural Lands Society .....	G-301
Ms Gracia Janes	
Dr John Bacher	
Niagara Home Builders' Association.....	G-304
Mr Paul Phelps	
Niagara North Federation of Agriculture .....	G-306
Mr Torrie Warner	
Ms Cathy Mous	
The Ontario Greenhouse Alliance .....	G-309
Mr Rej Picard	
Mr Antoine van der Knaap	
City of Port Colborne .....	G-311
Mr Ron Bodner	



G-13

G-13

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**Assemblée législative  
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**Official Report  
of Debates  
(Hansard)**

Monday 17 May 2004

**Journal  
des débats  
(Hansard)**

Lundi 17 mai 2004

**Standing committee on  
general government**

Greenbelt Protection Act, 2004

**Comité permanent des  
affaires gouvernementales**

Loi de 2004 sur la protection  
de la ceinture de verdure



Chair: Jean-Marc Lalonde  
Clerk: Tonia Grannum

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 17 May 2004

Lundi 17 mai 2004

## GREENBELT PROTECTION ACT, 2004

LOI DE 2004 SUR LA PROTECTION  
DE LA CEINTURE DE VERDURE

Consideration of Bill 27, An Act to establish a greenbelt study area and to amend the Oak Ridges Moraine Conservation Act, 2001 / Projet de loi 27, Loi établissant une zone d'étude de la ceinture de verdure et modifiant la Loi de 2001 sur la conservation de la moraine d'Oak Ridges.

**The Chair (Mr Jean-Marc Lalonde):** I would call this meeting to order. Just before we proceed, I think everyone has received on their desk a copy of the discussion paper report. It's for your information. You can take time before Friday, if it's possible, to go through it.

**Ms Marilyn Churley (Toronto-Danforth):** On a point of order, Mr Chair: Just very briefly, we had asked the Ministry of Municipal Affairs to provide a map outlining very clearly the greenbelt area and we don't seem to have any evidence. We were told that we would have such a map. Do you know what has happened with that request?

**The Chair:** Is the map that was asked for available?

**Clerk of the Committee (Ms Tonia Grannum):** I do not know.

**Ms Churley:** Do we have any representatives from the Ministry of Municipal Affairs here who could tell us whether we have a map coming or not?

**Clerk of the Committee:** If you could come forward to the microphone and just introduce yourself.

**Ms Churley:** Just very briefly. We requested it and it would help us to have it.

**Clerk of the Committee:** If you could take a seat, though, and just introduce yourself for Hansard.

**Ms Barbara Konyi:** I'm Barbara Konyi, staff from the Ministry of Municipal Affairs and Housing. We will have a map to you within the next 10 to 15 minutes.

**Ms Churley:** Great. Thank you very much. That's all I needed to know.

**The Chair:** So the map will be made available to all of us in about 10 or 15 minutes?

**Ms Konyi:** Yes.

**The Chair:** Is that satisfactory?

**Ms Churley:** That's great, thank you.

**Ms Konyi:** Oh, and last week Mr Hudak asked a couple of questions of staff to answer, so I've come back to give you that response.

You asked about the definition of "urban settlement area." Bill 27 does propose a moratorium on urban uses as defined in the bill outside of urban settlement areas. The definition of "urban settlement areas," as currently worded in the bill, are areas "designated in an upper-tier or single-tier official plan for urban uses as an urban area, urban policy area, town, village, hamlet, rural cluster, rural settlement area, urban ... or rural service" area "on December 16, 2003." So you'd have to go back to municipal official plans for information on these designations—

**Mr Tim Hudak (Erie-Lincoln):** Thank you for getting back to me. I don't need the definitions reread to me.

**Ms Konyi:** I was going to continue on. I have a bit more for you, if that's OK.

**Mr Hudak:** OK.

**Ms Konyi:** Any of those terms that I had just listed off are common designation names used throughout the greenbelt study area for urban settlements.

The other key definition is that of "urban uses." You have to look back at that as well to assist you, because that's in the definition of "urban settlement," so you need to know what an urban use is as well. Do you want me to go on to that, what was worded in the bill?

**Mr Hudak:** What I was hoping for is greater clarification than what the bill says. You'll have non-agricultural commercial, non-agricultural industrial etc, but I'm trying to understand what those definitions mean exactly and the types of uses in there.

**Ms Konyi:** What those ones are? OK.

Non-agricultural commercial uses could include things like gas stations, restaurants or hotels. Non-agricultural industrial uses could include industrial plants, auto-wrecking yards. Multi-residential uses are townhouses, apartment buildings, residential plans of subdivision. Agricultural commercial uses could include things like farm implement sales outlets, farm produce outlets, veterinary clinics and things that relate back to the agricultural use. Examples of agricultural industrial uses include things like grain drying and storage or wine processing. Those are some examples.

**Mr Hudak:** Do the definitions rest somewhere? If I have a constituent or if somebody comes before this committee and wants to know where they fit in those definitions, is it up to the minister to decide? How would I know if a particular industrial use is agricultural or not?



**Ms Konyi:** Again, the definition takes you back to what's in the municipal official plan document, so you have to refer back to what's permitted in those municipal plans.

**Mr Hudak:** So it depends on the particular municipality?

**Ms Konyi:** Yes, it does.

**Mr Hudak:** I appreciate the responses. Could we get this in writing as well as the verbal address?

**Ms Konyi:** It will be on Hansard.

You also asked about new urban settlements. Do you want me to go on about that today as well?

**Ms Churley:** On a point of order, Mr Chair: With all due respect, I want this information as well, but we have people waiting.

**Mr Hudak:** I appreciate the promptness of the response. It may be helpful if, in addition to being in Hansard—but maybe we won't read them in now—we could get those in writing. I'm sure all the committee members would enjoy that. It might be a better process than reading it into the record formally.

**The Chair:** Ms Churley?

**Ms Churley:** No, no. That was my comment.

**Ms Konyi:** OK.

**The Chair:** Is this satisfactory, Mr Hudak?

**Mr Hudak:** I appreciate the promptness of the response. The written response is probably the best way in the interest of time.

**The Chair:** Thank you.

## EARTHROOTS

**The Chair:** We will now proceed with the first presenter of the day, Earthroots, Josh Matlow. Good afternoon. Welcome to the general government committee on Bill 27. You have 20 minutes. The whole 20 minutes can be taken by your presentation or you can leave some time for a question period at the end.

**Mr Josh Matlow:** Thank you to the committee for allowing me to make a brief deputation on Bill 27. Earthroots is very supportive of this initiative. It's a long time coming that a government takes a responsible and balanced approach to what southern Ontario and south-central Ontario will look like over the coming years, and we are delighted that a government is taking this approach. However, we want to make sure this initiative is one that will protect ecologically sensitive areas and farmlands and support municipalities in a way that this is in perpetuity.

I want to give a little chronology of what we've experienced over the past 30 years of promises by provincial governments over and over again, countless studies, public consultation hearings etc. I want to go back to 1968 and the Toronto-centred region plan; the provincial parkway belt west plan, 1976; the Niagara Escarpment plan, 1985; the Ontario Environmental Assessment Advisory Committee's report; Ron Kanter's Space for All: Options for a Greater Toronto Area Green-land Strategy, 1990; the report of the Greater Toronto

Area Task Force, otherwise known as the Golden report, in 1996; the Greater Toronto Services Board, a GTA countryside strategy; the draft strategic directions in 2000; then we get to Growing Together: Prospects for Renewal in the Toronto Region by the city of Toronto, 2002; then more recently, the Ontario Smart Growth, a new vision in 2002; and then the central Ontario region Smart Growth Panel's report, Shape the Future, in 2003.

So as you can see, 30 years and beyond, provincial government after provincial government have been making promises that they're going to give a comprehensive plan to how southern and central Ontario will be planned in a balanced approach between needed development and ecological sustainability. We want to make sure this one does it right, and we've got a great opportunity to do so.

While we support this plan and the creation of a study area in this bill, Earthroots is concerned that the study area is not wide enough to truly protect southern Ontario. Areas such as Kitchener-Waterloo, Wellington, Dufferin and Simcoe are not part of this study area and we wonder why. Earthroots is concerned that by not expanding the greenbelt study area to include these regions, the unintentional consequence of this will in fact be the promotion of unbridled urban sprawl into them.

In fact, a friend of mine recently said that the best way to make a deal with developers is to see what they need, see what you can give them and make sure that in between you have policy that reflects what your constituents want and is politically expedient.

My concern is that by not adding Kitchener-Waterloo, Simcoe and other regions into the greater study area, developers will feel comfort with that, that they have a lot of room to move to create their sprawl. Meanwhile, I don't think you're going to hear a lot from them over the coming weeks going against the spirit of this greenbelt act. I do believe that if the development industry were opposed to the greenbelt plan, they would do a lot to stop it.

I'd like to cite my good friend Neil Rodgers from the Urban Development Institute of Ontario, who is here. Neil is a remarkable advocate for the development industry, and I can't say enough about this gentleman. He's done a lot of work that will support my argument. He just handed me this presentation to the standing committee on general government. I think he'll give you a copy of this, so when he does, turn to page 4: "Central Ontario population growth outpaces rest of Canada." He looks at the entirety of Canada, and when he wrote "Toronto" he said, "Toronto-Hamilton-Kitchener." It seems like the development industry views Kitchener as part of the Toronto growth area. It gives Earthroots concern that the Kitchener-Waterloo area isn't being considered by the government study area, and meanwhile the developers are, as usual, a step ahead of the provincial government and are going ahead, looking at how they're going to develop this area.

Kitchener-Waterloo is on the Grand River. This is a heritage area. In fact, the Butler's garter snake is a

species of special concern according to COSEWIC lists and can be found only in the Grand River watershed. This area has enormous ecological sensitivities, and it is so close to Toronto that this is the next mecca for sprawl.

Along with Kitchener, Barrie, Innisfil and the Simcoe area, there are new highways being planned and many of them were initiated by the previous government. The 400-series highways, including 427, will give a direct conduit toward the Simcoe-Barrie area. There are already development plans for that area. Meanwhile, there isn't proper transit infrastructure set up for either Kitchener, which I don't believe even has a GO stop, or Barrie, which I believe has VIA Rail but doesn't have a GO station.

Barrie, if it's right outside the current greenbelt study area, is going to be the mecca for sprawl. This is where all the focus is going to be because it's just up Yonge Street, just north of Toronto, and is the most appropriate place. If I were my friend Neil Rodgers, if I were a developer, this would be a terrific place to focus development. Several thousands of people commute from Barrie and Innisfil to the greater Toronto area every day. Just give me a moment; I want to get a couple of stats for you. This is from the Ontario government's Smart Growth Web site. Between 1999 and 2001, Simcoe was already supposed to grow by 56.3%. I would imagine, and I would argue, that if it's not part of the greenbelt study area this is going to explode into greater numbers and this is going to be an area that we need to be concerned about.

1600

Then the MTO, of course, will argue that we need a highway. Without proper transit infrastructure, we're just going to have one highway after another highway. Jane Jacobs once said that if you build the road the cars will come, and if you build another road more cars will come. We are also seeing the future construction of the mid-peninsula highway going out to Niagara, to the United States. Mr Hudak is familiar with that territory. This is of enormous concern as well.

We've got incredible agriculture out there. We've got wonderful farmlands. We've got a fruit belt. We've got vineyards. A new highway ripping through the grape lands and the fruit belt, right through the escarpment, which is supposed to be protected, goes against the spirit of what this greenbelt is about. Highway 427, which will rip through this new greenbelt, rip through the heart of the Oak Ridges moraine, which was given some protection by the previous government, again goes against the spirit of Smart Growth, the spirit of this greenbelt.

Highways may not be considered a development by some. Earthroots believes that highways are another form of development. They may not be houses, but they are multi-lanes, they pave over ecologically sensitive areas, over wetlands, over streams—anywhere they go, they rip through the heart of that ecologically sensitive area, including the moraine. These highways will again be infrastructure for further sprawl. So we would not only like to see Kitchener-Waterloo, Simcoe, Dufferin,

Wellington, the regions on the outlying exterior of the current study area, included in the study area, but also all these highways stopped. There should be a moratorium on these highways until we decide what southern Ontario is going to look like and how it's going to grow.

There have been concerns by many environmentalists in Ontario about migration corridors in southern Ontario for a variety of species of wildlife, including the garter snake that I sighted in the Grand River region.

There was an idea posed by the last government that under the new Bayview extension they created there be tunnels for frogs to go under these roads. There is no scientific basis, as far as I can understand, to believe that frogs can find tunnels to go under these roads. I also don't know of any science that makes me believe that street signs would assist these frogs in getting under these roads. And I don't know of any government initiative for a literacy program for these frogs or any other wildlife that share these habitats. So, unless there were to be a brilliant idea for a literacy program for wildlife, I don't think these tunnels and these made-up ideas on how to help wildlife migrate—the sense of that is parallel.

You know those GIS maps? You know how on the bottom layer you see the ecological, geographical area that we're working on, and then we put maps on top to look at the roads, to look at the development? I suggest that we turn it upside down and we think about where our water comes from, where our drinking water comes from, how animals migrate through southern Ontario. Then plan the development, plan the roads like that. Earthroots is not against development and we're not against growth; we understand there are going to be maybe two million people moving into the GTA over the next 20 years. It needs to be done, but it needs to be done in a responsible way. Simply protecting a limited area around the GTA doesn't do it. If you look under the definition of Smart Growth, leapfrog development isn't part of that.

Obviously, Earthroots was dismayed when the Liberal government didn't fulfill their promise to stop the construction of the 6,600 homes in Richmond Hill.

We don't want to see a promise kept if it's done hastily and if it's done without consideration of the unintentional consequences of keeping this promise. We support this greenbelt. We want it to work. We want a true greenbelt initiative to work, but we want to see the greenbelt encompass all the lands in southern Ontario that make this work.

As I read before, there have been over 30 years of studies, public consultations and thought. The work has been done. We can read through 30 years of reports. Now, let's make it work.

Your constituents are naturally those who voted for you and those who didn't who live in your area, but we have several generations of constituents who haven't been born yet who are going to have to live in this area. I hope, for your careers, that they'll be voting for you too. The best way to gain their votes is to leave a legacy for them today.



Let's stop the rogue MTO ministry from going off on their own, building highway after highway. There has been so much work put into this greenbelt. We don't want to see it torn up by new, multi-lane highways. There is a culture, a fabric, a community in these agricultural areas. They don't want to be destroyed by new sprawl in the Kitchener-Waterloo area. There's a town near Kitchener called St Jacobs. The locals there, the German Mennonites, call it Jakobstettel. St Jacob's is this incredible area of farmland as far as the eye can see. We don't want to see this become the next focus for sprawl if Kitchener-Waterloo isn't protected.

I encourage you all to take the responsible step and recommend that this bill be amended, that the current study area be expanded to not only encompass the regions that I stated and make sure that this works for southern and central Ontario, but in fact functions as a true greenbelt and not a promotion for leapfrog development. We certainly have concerns that I believe are well grounded. I know that the development community needs guidance as well on this. I know you'll do the responsible thing by giving us all—sort of like a referee at a hockey game. The developers want to sell houses like hot dog vendors sell hot dogs. But I don't believe they care specifically where it's going to go as long as the revenue comes in. We care about the specific areas that are ecologically important, so we want to make sure that this is done in a balanced, fair and comprehensive way that thinks of the future.

The last remark that I'd like to make is that, without the support of farmers and municipalities, this entire plan could implode within a very few years. You need to think of a way to support farmers' concerns where they believe that—I can just imagine a farmer on TV one night saying, "What is this, the Soviet Union? Why are they telling me that I can't sell my land to developers? We've planned a retirement on this." Well, the reason is that we need to protect ecologically sensitive lands, and that's a very fair and grounded reason. But we need to think of their interests as well, and if we don't have their support, this won't work. So we need to think of what we can do, what financial incentives, what sort of easements, what sort of trusts we can set up. Get your staff to think about this. What can we do to support the farmers so that we have them on board?

**Municipalities:** Bravo to the government for initiating to give a share of the gas tax, two cents, to municipalities. That's a wonderful start. But if municipalities don't get even more incentive to curb sprawl and focus on transit, municipalities are going to want to support sprawl, as many of them have for over 30 years, because sprawl means a larger tax base for revenue generation.

We need to get environmentalists, the UDI, developers, farmers and municipalities on board. Only then can it work. Let's not do this hastily. Let's think of the bigger picture, and let's get this right. This is a great window of opportunity, because we've got a terrific Premier, a terrific minister and we know they want to do this right.

**The Chair:** Thank you, Mr Matlow. You have taken the whole time, so there isn't any time for questions. I appreciate your presentation and we will continue with the next presenter. Thank you again.

1610

#### DAVIES HOWE PARTNERS

**The Chair:** Next will be Davies Howe Partners. On behalf of the general government committee, I'd like to welcome you to this public hearing on Bill 27. As I mentioned to the others, you have 20 minutes total. If you're taking the 20 minutes, then there won't be any time left for question period. You can proceed now.

**Mr Jeff Davies:** Thank you, Mr Chairman and members of the general government committee. My name is Jeff Davies and I am counsel to a group of landowners that are known as the Bayview East Landowners Group. I've distributed a submission via the clerk which is being passed around to you.

The Bayview East Landowners Group is made up of 12 landowners in Richmond Hill. They own approximately 250 hectares, or 617 acres, of what is known as the Bayview east or north Leslie planning area. I've provided you with a map that shows the Bayview east, or the north Leslie, planning area. The area is located west of Highway 404, north of Elgin Mills, south of 19th and east of Bayview Avenue. The total area of the planning area is 619 hectares. Of that, you can see up in the upper left-hand corner of the map that 48 hectares, or 118 acres, are within the Oak Ridges moraine.

The Oak Ridges moraine makes up 7.6% of the planning area. Almost 14 hectares, or 35 acres, of the Oak Ridges moraine lands are proposed for environmental protection by my clients. Studies have been done on the remaining 21 hectares, or 52 acres, of the Oak Ridges moraine lands, in accordance with the Oak Ridges moraine conservation plan. These lands are proposed for development. Planning Act applications on the developable lands on the Oak Ridges moraine were filed prior to the Oak Ridges moraine legislation and are subject to the transitional rules under the Oak Ridges Moraine Conservation Act.

In August 2003, with the consent of the town of Richmond Hill, the Ontario Municipal Board ruled that these lands enjoy the transitional rules of the Oak Ridges moraine act. This is reflected in the decision and order which I quote in paragraph 8.

We do not believe that section 14 of Bill 27, which changes the transitional rules, takes away that ruling, but I ask you to be careful and to ensure that section 14 is clear, and that anyone who has qualified for transitional protection under section 17 of the act continues to keep it, and that Bill 27's introduction, and section 14 of it, does not cause confusion. So if you're referring anything back to staff or to your policy people, I'd be grateful if you'd bear my paragraph 9 into account.

In paragraph 10, I say that in the planning area, 114 hectares, or 281 acres, are already within the urban



boundary of the town. That's the southerly area on the map, north of Elgin Mills. It's already within the urban boundary. We're proposing to take the northerly portion of it and include it within the urban boundary of the town and the region. This is largely supported by the town of Richmond Hill, the region of York, and the Toronto Region Conservation Authority, although they oppose urbanizing the lands north of 19th Avenue, as I understand it.

To the north of the area is the Oak Ridges moraine. I'm sure that many of you have driven up Highway 400 or Highway 404 and, as soon as you get to 19th Avenue, which is the road at the top of the map, on Highway 404 there's a sign. It says, "Oak Ridges Moraine next 10 kilometres." So there is a greenbelt that is immediately north of the Bayview east lands.

Something for you to think about, and I'm in paragraph 14 of my submission: Supply of lots for new housing is very tight. Prices for land and lots are increasing and becoming more and more scarce. On the other hand, intensification in already built-up areas is very difficult to achieve because local opposition groups almost invariably oppose applications to increase densities. This occurs both in the city and the suburbs, and if you want to discuss this in the question period, we can do that.

Bayview East has been subject to 10 OMB pre-hearing conferences and has had over 20 days at the Ontario Municipal Board prior to the hearing commencing. If Bill 27 becomes law, then section 6 would stay those proceedings.

Bayview East was the subject of an extensive pre-hearing case management process at the OMB, and stakeholders from many different perspectives were represented, including the town of Richmond Hill, the region of York, the TRCA, Save the Rouge, and developers and landowners.

Due to the size and complexity of the hearing, involving nearly 1,500 acres, it has taken a long time to get things going. The first pre-hearing was held in October 2002.

In paragraph 18, I note that imposing a moratorium, as Bill 27 proposes, runs smack into two difficult public policy issues that must be considered by your committee. First, it comes at a time when land for building lots is scarce and prices are high and rising. Second, opposition to intensification projects in the city and the suburbs is never-ending.

We live in a highly desirable metropolitan area and the federal government has the immigration tap open. People need places to live.

Bayview East represents a partial solution to these problems. It is not on the outer edges of the GTA, but is a large infill site. It proposes to protect 143 hectares, or over 300 acres of land, for environmental protection. If you look at the map I've handed out to you, you can see the three greenbelt systems, all riparian, that have been proposed by my clients on various tributaries of the Rouge River.

The parties to the OMB proceedings have filed numerous witness statements from a wide range of environ-

mental experts, and the OMB is well equipped to adjudicate the outstanding differences.

In view of the advanced stage in the process and the fact that both the town and the region and the TRCA support the inclusion of the Bayview East lands in the urban boundary, we are asking you to remove these lands from the greenbelt study area. This would allow the hearing to start and much-needed land for housing can be brought forward, while guaranteeing protection for over 300 acres of land for the environment.

The town of Richmond Hill and the conservation authority in the region are seeking more than 300 acres of land for environmental protection, and that is the subject matter of the OMB hearing. It's not as if they're opposed to this development; they're in favour of doing so.

In paragraph 25, I say that if you're not prepared to exempt Bayview East from the moratorium, recognizing that there are only roughly six and a half months to go, I ask you to recognize how extremely far advanced Bayview East is in the planning process. It's not fair to change the rules now and would not serve any purpose.

If you decide to keep Bayview East in the study area, then I ask you to make it clear that the problems and uncertainties in subsection 13(2) and section 14 of the act not be applied to Bayview East. You could accomplish this by deleting subsection 13(2) or providing that it does not apply to applications that have reached such an advanced stage in the planning process.

Again, if you'd refer this back to your policy advisers and lawyers, we'd be quite content to work with them on clarifications. I've attached, for your information, a chronology that deals with Bayview East and all of the many steps that it has gone through: over 10 OMB pre-hearing conferences; over 20 days at the OMB prior to the commencement of the hearing; my clients have spent over \$3.5 million preparing for the hearing; we have in excess of 35 or 40 expert witnesses dealing with environmental matters alone. We have taken into account all of the hydrogeological, hydrological, all the water supply, all the corridors for amphibians and other creatures, and these things can be dealt with at the OMB.

1620

I'd be happy to take any questions. I've tried to keep my presentation to 10 minutes to leave an opportunity to do that. I would really stress that subsection 13(2) of the bill is extremely unfair to those who have come far in the process because it leaves the door open for extremely large changes to the ground rules that affect planning applications on which many dollars and steps have been taken, and not to, through section 14, take away rights that have crystallized through the OMB.

I think you can see by looking at the Bayview East plan that a substantial amount of effort has been invested in providing environmental protection, with roughly 20% to 25% of the lands preserved for environmental purposes.

I hope this submission is of help to the committee, and I urge you to follow up on my requests. I would be pleased to discuss any matter of this with your members.



**The Chair:** We have approximately eight minutes left, and we have to be careful with our questioning in view of the fact that your case is in front of the OMB at the present time. So it is open for questions, but I just want to make the members aware of that.

**Mr Davies:** In that regard, the case has not started before the OMB. It has been through 10 pre-hearings, but the hearing itself has not started, and I'm not asking you to do anything which would affect the outcome of the hearing.

**The Chair:** The first question would be from Mr Hudak.

**Mr Hudak:** Thank you, Mr Davies, for your presentation and your specific points on subsection 13(2) and section 14. Well put.

Your presentation today was rather narrow in nature, for the clients that you're representing. I know you yourself have a larger, big-picture view of Bill 27 and Bill 26 in combination. Perhaps you could discuss the concerns you have with respect to the affordability of housing for families in Ontario and the politicization, I guess, of the approval process that may take place after those bills at a municipal level.

**Mr Davies:** I don't want to use up a lot of the time, but I will say that at the present time, the planning process in Ontario is meant by the Planning Act to be a transparent process that's open for all to see, and that has allowed projects to move through the planning process. Many of the changes, particularly in Bill 26 but also in Bill 27, would take away that transparency, I believe unintentionally. I believe the government moved so quickly on Bills 26 and 27 that it really didn't appreciate the extent to which it would be turning the Planning Act process in Ontario on its ear by giving so much discretion to the minister and to cabinet, and that it would truly take a transparent system and make it, at best, translucent, and probably, in many cases, dark. I hope that's helpful.

**Mr Hudak:** Maybe you have some specific advice on the two issues you brought up, ministerial authority and the transparency at the local level, on those pieces of legislation?

**Mr Davies:** We're all in favour of autonomy at the local level. I think the ruling party is as well. Unfortunately, when you read Bills 26 and 27 together, they strip a great deal of autonomy from local municipalities, perhaps not to the degree that the municipalities realize. Certainly we'd be quite prepared to work with the committee and its advisers in attempting to reinsert some transparency into the system. I mean that quite genuinely.

**The Chair:** We'll go on to Ms Churley.

**Ms Churley:** Thank you very much for your presentation. You said a couple of things that I want to follow up on in my brief time here. I believe you said that Richmond Hill municipal council supports this development going ahead.

**Mr Davies:** That's correct.

**Ms Churley:** In what capacity? They voted in council and—

**Mr Davies:** Yes, that's correct. There have been many reports presented to the town of Richmond Hill council regarding the inclusion of this area in the urban boundary. The town of Richmond Hill is on the record as supporting the inclusion of this area in the urban boundary, with the exception of the lands north of 19th Avenue.

**Ms Churley:** North?

**Mr Davies:** That's correct. The town of Richmond Hill supports everything that's colourized on the map which has land uses, although we have differences with respect to some of the designations and the extent of the environmental protection.

**Ms Churley:** What would some of these differences be?

**Mr Davies:** Briefly speaking, the town of Richmond Hill wants to see the land west of Highway 404, and east of the middle Rouge tributary as industrial, and we believe that it's more appropriate for residential.

The second area of differences has to do with the width of the corridors. In essence, the town of Richmond Hill is looking to add about 20 metres to each of the corridors, and perhaps add a number of other features.

**Ms Churley:** So their position is somewhat different from yours.

**Mr Davies:** Yes.

**Ms Churley:** The other thing I wanted to ask you quickly is—

**Mr Davies:** By the way, I wasn't saying their position was the same. Their position is the same in the sense that they agree it should be part of the urban boundary. After that, we do have some differences.

**Ms Churley:** That's what I wanted to clarify, because that was my impression.

Your contention—and I've heard this before—the argument that we need to create what is, in my view, urban sprawl because people will oppose intensification and housing prices, especially at the lower end, will keep going up, where do you get that information?

**Mr Davies:** That's not my contention, that we have to create more urban sprawl. My—

**Ms Churley:** Well, we call it different things.

**Mr Davies:** Let's put nomenclature aside for the moment. I'm of the view that we need to grow through intensification and that intensification alone will not support all the growth we need to accept in the future. With good planning, we will have some more urban expansions. Urban expansions will occur to some degree, together with good intensification. You can't do it all through intensification.

**Ms Churley:** Right—

**The Chair:** Thank you.

**Mrs Maria Van Bommel (Lambton-Kent-Middlesex):**

Thank you very much for your presentation. I noted two or three different times in your presentation that you mentioned the rising prices of building lots and such. I assume your contention is that this is because there are pressures from within the population and the growing populations of these communities. But would you not

also agree that this is generally the case right across the province?

**Mr Davies:** Of course.

**Mrs Van Bommel:** And that things such as low interest rates and that are also adding to the pressure that would cause building lots and existing houses to go up in price?

**Mr Davies:** Yes. I think it's compounded in the GTA by the extreme limitation on available lots to be purchased. I agree with you totally that our growth—which has been our good fortune in many respects, I think we'd all agree—has been fuelled by low interest rates, high immigration, those types of things. That phenomenon has been felt beyond the GTA, but the take-up in the GTA has been so great, and has happened so much faster than anyone ever expected, that there's very little left to go through. In the last year, it has pushed prices through the roof. That's a serious problem that we're going to have to contend with, and I suspect it's going to get worse before it gets better.

**The Chair:** Very good. Our time is up. Thank you for your presentation and taking the time.

1630

#### URBAN DEVELOPMENT INSTITUTE OF ONTARIO

**The Chair:** The next presenter will be the Urban Development Institute of Ontario, Mr Neil Rodgers. On behalf of the general government committee, I'd like to welcome you to our public hearing for Bill 27. You have 20 minutes, some of which you may leave for questions. You may proceed now.

**Mr Neil Rodgers:** We'll do our best to wrap it up and have questions from the floor.

Members of the committee, my name is Neil Rodgers. I am the president of the Urban Development Institute of Ontario. Joining me, and also sharing my time, is Mark Tutton, the chair of UDI Ontario and vice-president of Tribute Communities.

The land development and construction industries play a vital role in the economy of the province, yet its contributions are rarely acknowledged. Development and its related construction activity accounts for over 10% of the total provincial GDP—some \$50 billion—and directly employs over 350,000 workers. Ontario's construction industry in 2003 expanded at a rate of 8.9% per year—nearly twice the annual growth rate for the Ontario economy as a whole. In addition, recent growth in direct construction activity has contributed nearly one in every five dollars of growth in Ontario's economy. This activity and growth in turn contribute to Ontario's ability to deliver quality health care, education, infrastructure and critical social services to all Ontarians.

Economic growth and development are inextricably linked to policy and legislation. When the system operates in balance, the industry is able to respond to the dynamic needs of Ontario's industrial, commercial and residential consumers while contributing to the protection

of the natural environment and dedication of lands for public open space.

UDI recognizes the government's intentions concerning the long-term protection of southern Ontario's significant natural features, water resources and agriculture. UDI urges that for any provincial strategy to be complete, it must also accommodate population and employment growth in conjunction with the necessary infrastructure investments. It is the position of UDI that the greenbelt, as envisioned in the bill and referenced in the discussion paper, does not consider and address a balanced approach in accommodating the continuity of the economic performance of central Ontario.

This is not to say that UDI and its members do not support environmental protection. Last year, as part of the central Ontario Smart Growth panel deliberations, we clearly stated that Ontario must return to "big picture" planning, as was done in the late 1960s and early 1970s. Specifically, we called upon a 30- to 50-year infrastructure strategy to meet the demands associated with growth and a 30-year environmental vision. In many respects, this idea was premised on the notion of ensuring certainty through the planning process and ensuring that Ontario's key environmentally sensitive areas will be protected in perpetuity.

It must be brought to the attention of the committee that central Ontario does not have a scarcity of protected open spaces, countryside and environmentally significant areas. In fact, the central Ontario region has an abundance of lands in public ownership or control.

On page 4 of our submission we note that within the study area there are some 939,000 acres of lands held under the ownership or control of conservation authorities, the provincial government through the Oak Ridges moraine or Niagara Escarpment Plan, the Rouge Park and Bronte Creek Provincial Park—almost one million acres.

UDI believes that the bill employs a holding device on development applications and approvals on an unprecedented scale. While the moratorium on urban uses outside of urban settlement areas is limited to one year, the scale of restriction and its severity suggests a suspension of democratic rights requiring a significantly longer period to realize proper implementation. Ontario's experience with land use planning reviews of all scales suggests that the resources required in identifying and establishing genuine long-term land use reserves work best in a consensual process, which requires a strong financial commitment by the government. We urge the province to respect the rights of landowners. As part of this process, the province should consider introducing instruments such as tax incentives that offer to all parties a means to secure private lands identified for public purposes.

UDI has had discussions with such organizations as the Nature Conservancy of Canada and Ontario Nature with the notion of using innovative tax policy levers in order to establish a trust for the acquisition of identifiable and significant environmental features within the greenbelt. Furthermore, UDI shares the views of the Nature Conservancy of Canada and Ontario Nature that if all



Ontarians benefit from the protection of lands as part of a greenbelt, all should pay. In other words, if Ontarians want preservation of rural landscapes, they should be prepared to pay for it. The cost of preservation is not something that can or should be burdened by any one group in society.

Ontario's challenges of managing growth cannot be underestimated. The Golden Horseshoe area, in particular, is a magnet for growth and in fact has outpaced the rest of Canada by a margin of 3 to 1.

Much of this growth is fuelled by immigration, estimated as high as 60% in the Toronto CMA. It's widely supported by noted economists and municipal officials that the GTA and Hamilton regions will grow by an additional 2.5 million people over the next 25 to 30 years and add about 1.3 million jobs. The role of governments should be to balance the anticipated growth with the myriad of public policy issues, including maintaining an efficient land use pattern, ensuring appropriate and modern infrastructure capacity is in place, and protecting significant environmental areas while providing sound economic development opportunities for Ontarians.

The land development industry is responsible for creating livable environments and, notwithstanding popular opinion, is not contributing to sprawl. The term, by its definition, is contrary to the stringent provincial and municipal regime of planning standards and regulations. The level of growth experienced in the GTA is in direct proportion to the economic performance of the region and population growth. In fact, the discussion paper acknowledges that growth and development have been quite well managed in the province, with Ontario achieving higher urban population densities and housing concentrations when compared to comparable major US cities and other world cities such as London and Paris. In fact, if you go through the discussion paper, I don't believe the words "urban sprawl" are even mentioned.

Sufficient housing and employment opportunities have an enormous impact on an individual's quality of life and the economic health of our communities. These factors, in and of themselves, are not mutually exclusive. Inadequate housing or employment lands constrain economic growth. The context in which the housing market operates within the economy must be a concern for all Ontarians, and particularly legislators. We intend to focus the balance of our remarks on these issues.

UDI believes that the Greenbelt Task Force did not, during its deliberations, and as evidenced in the discussion paper, consider the housing and employment needs of Ontarians. The discussion paper focuses on the resource side of a complex equation, but neglects the human and socio-economic elements. This, in our submission, is a fundamental flaw of the review, as one cannot design a greenbelt without understanding and balancing all aspects of land use—social, environmental and economic.

New thinking concerning the creation of successful and sustainable urban areas and affecting regional economic development must take a holistic vision. Richard

Florida points to the value and importance of creative talent pools and cultural diversity within the labour force—the creative class, as he calls it—to the growth and development of business clusters. Clearly, an urban area which offers a balance of housing, employment, transportation, social and recreational opportunities will be the most successful in attracting a wide demographic variety which will enhance long-term prosperity for the region. This balance, in our respectful submission, is lacking in the bill and the task force discussion paper.

**Mr Mark Tutton:** Thank you, Neil. Bill 27, without a correlating land needs and infrastructure study, has created and will create significant uncertainty in the marketplace within central Ontario. This bill will specifically impact the supply of housing and employment lands, leading to a rise in land prices and an escalation in the cost of new and resale housing, and jeopardizing Ontario's economic prosperity and competitiveness relative to other Great Lakes states.

The historical pattern of development in the central Ontario region has been responsible, responsive to fluctuating market conditions and a model system when compared to American cities of similar context.

The regime in Ontario governing land use is by far one of the most regulated and comprehensive public processes on the North American continent. UDI urges the government to take a comprehensive "big picture" policy approach to land use, environmental and strategic infrastructure policy in the creation of a greenbelt as part of a larger growth management exercise.

Greenbelts are not effective growth management or countryside preservation strategies, since they have proven to create unintended consequences. Greenbelts are widely used in such places as Portland, Oregon, and London, England. While they may achieve their primary policy objective, in the wake of their outcome, a number of other matters arise.

Portland is a case study that demonstrates the relationship between affordability and land supply. In 1979, Portland's regional government imposed an urban growth boundary: some 236,000 acres, or 368 square miles. It has been amended some 40 times since being imposed, with the most recent amendment occurring in December 2002, which added over 18,000 acres. The enabling legislation mandates a periodic review of the growth boundary every five to seven years. State law directs Portland's regional government to maintain a 20-year land supply for housing and employment purposes within the boundary.

1640

According to the Urban Land Institute (Market Profiles), the price of vacant land within the Portland, Oregon metro area has experienced dramatic increases. The chart gives examples of some of those increases in the 1995-99 period.

Extensive literature reviews have also concluded that the imposition of a regulatory urban growth boundary would most likely place upward pressure on land and real estate prices. The actual magnitude of these price spikes



will depend on the degree of the regulatory instrument chosen, the tightness of the urban boundary, and the dynamics of the marketplace, including population and employment growth, immigration and the economic cycles experienced from time to time.

What should be the concern of the committee and the government are the unintended consequences of the imposition of a greenbelt that are clearly not in the public interest, be they increased housing and servicing costs, leapfrog development and even homelessness. Such adverse impacts will undermine future investment and Ontario's economic prosperity. Constraints on land supply that force land prices to rise as a result of policy rather than physical or environmental constraints and natural economic market forces should be avoided.

In the late 1980's, the combination of a surge in new housing demand and an inadequate supply of serviced or readily serviceable land in the GTA led to a significant rise in housing prices, both new and resale, as a result of low inventories. In an effort to bring equilibrium to the market place, in 1989 the David Peterson Liberal government introduced the Land Use Planning for Housing policy statement that contained policies requiring official plans to ensure a 10-year housing supply, as well as a range of housing types. This approach was adopted by the NDP in their comprehensive Provincial Policy Statement, PPS, in 1994. When the PPS was amended in 1997 during the Conservative administration, it was recognized that a longer-term view of land supply—20 years—was warranted to respond to the dynamics of the economy.

The lesson learned during the last decade is that the adequacy of designated land is a key public policy and economic issue that cannot be ignored. It has caused governments of all stripes to respond in order to ensure a balanced marketplace in terms of affordability and the provision of a range of housing types. As a result of higher than planned population growth over the last seven years, the inventories of designated land in the GTA municipalities are particularly low and nearing exhaustion. The combined effect of low inventories, servicing constraints and the imposition of a greenbelt, particularly within close proximity to existing urban boundaries, will have a deleterious effect on land costs, and in turn will affect housing affordability. Evidence shows that since the announcement of Bill 27 and coupled with strong demand for new housing, residential serviced lot prices in the GTA have soared. The next couple of charts illustrate that statement.

There's also strong correlation between job growth and population growth. Quite simply, where the jobs are, people will follow. Slower employment growth in the early 1990s led to slower population growth. The fact that Ontario is on strong economic footing has made it the destination of choice for people from within Canada and immigrants to call home. For this, governments should not apologize, nor attempt to discourage via policy solutions that in the long-term will have dire consequences. Accommodating healthy job growth in the future is the key to economic, demographic and regional

prosperity. A number of private sector consulting firms who closely study employment trends and land availability conclude that employment lands are in short supply, particularly in York, Halton and Peel regions.

Housing affordability in the central Ontario region will erode the attractiveness of the region to enterprises setting up and/or expanding their operations. Socio-economic conditions for employees, as well as key elements in promoting healthy and sustainable economic development will not be well served by restricting housing and employment lands. The availability of adequate housing supply and, more particularly, housing affordability, has already been identified as a key economic development issue in the GTA. The commissioner of planning and development services in the York region recently stated the following: "York region faces a number of challenges that impact its ability to maintain economic competitiveness, including the availability of diverse and affordable housing choices that will directly affect the retention of workers."

UDI is supportive of the Greenbelt Task Force approach to new transportation and infrastructure in that it recognizes the future needs of the province, while having regard to the nature and significance of the proposed greenbelt with an appropriate balance between roads and transit. Furthermore, we have long supported a review of the environmental assessment process to consider new and innovative technologies.

There has been a high correlation between new home price increases and resale prices in the GTA since the early 1980s. This was particularly evident during the late 1980s, with a time of low land inventories and limited supply of new housing. Rising housing prices discourage prospective first-time buyers from entering the market. Not only does this prevent household formations and housing starts, it has measurable economic consequences on the provincial treasury, as housing starts are a signal of a strong and buoyant economy.

Recent data from the Toronto Real Estate Board indicate the following: first, a 10% increase in housing prices, other things being equal, such as interest rates, reduces the number of renters likely to purchase by nearly 20%; and second, a 20% increase in housing prices reduces the number of renters likely to purchase by nearly 33%.

According to CMHC's survey of Consumer Intentions to Buy or Renovate a Home, 2002, almost 50% of potential homebuyers at that time who had not purchased had already been priced out of the market, citing the costs of homes as too high, and this in an era of historically low mortgage rates.

This survey also brings to light many other key observations of people residing in the GTA, in particular, ground-related housing, being single, semi-detached or row housing, is the overwhelming choice of 87% of potential buyers, and affordable housing, under \$200,000, is sought by the vast majority, particularly those with moderate incomes below \$60,000 per annum.

Rising land costs for new housing will make affordability for young families and working class Ontarians a



dream that will remain beyond their means. Only existing homebuyers will benefit through increased home equity. That, in our respectful submission, is not good public policy and does not create strong communities or a strong local economy.

UDI urges the government to take a comprehensive big-picture land use, environmental and strategic infrastructure policy approach. UDI strongly recommends that before the greenbelt is imposed and this bill proceeds to third reading, the province undertake a comprehensive supply and demand analysis for housing and employment lands. Such an analysis will, in more scientific terms, properly define the region's needs for designated urban lands. The analysis, once complete, can assist the government in the design of the greenbelt to balance the needs of Ontarians for housing choices that are affordable, employment lands that ensure a strong economy, and a greenbelt strategy that will be a legacy for future generations.

UDI recognizes the government's intention to establish a greenbelt. As mentioned earlier, that policy objective, when done in a balanced framework appreciating the dynamics of population, employment growth and market forces, can be a positive measure for our communities and will enhance the sustainability of the central Ontario region.

Defining a greenbelt, from UDI's perspective, must be an exercise that is done with caution, not just to achieve political purposes. Evidence from other jurisdictions has proven that unintended consequences have distorted the primary social benefit. The central Ontario region will continue to grow because Ontario is the place of choice for many people to raise a family or start a business.

We submit that if it is the desire of the government to have a permanent greenbelt, then the provincial government, as part of the greenbelt exercise and the pending growth management strategy, must establish long-term future urban areas. We are not suggesting that these lands be approved for urban purposes today, but rather that they be identified and assigned an appropriate designation in regional and local official plans, as would the delineation of the proposed greenbelt.

To accommodate the projected 2.5 million persons and 1.8 million jobs over the next 30 years, UDI submits that a 50-year urban boundary be defined in conjunction with the creation of the greenbelt. In this way, long-term certainty is established for landowners, investors and the public, with the integrity of the greenbelt maintained in perpetuity.

**The Chair:** Thank you for your presentation. We have taken all the time that we had available, so it's too bad but we don't have time for any questions.

#### ONTARIO FEDERATION OF AGRICULTURE

**The Chair:** The next presenter will be the Ontario Federation of Agriculture. On behalf of the general government committee on Bill 27, I'd like to welcome

you to this hearing. You have 20 minutes, which could be divided between a question period and your presentation, or you could take the whole 20 minutes, if you want. It's up to you.

1650

**Mr Ron Bonnett:** Thank you for the opportunity to present. The Greenbelt Protection Act does impose a one-year freeze on the conversion of rural and agriculturally zoned lands to residential, commercial and industrial land use designations. During this one-year freeze, the government intends to establish a permanent greenbelt in the Golden Horseshoe region, the urban arc extending from Oshawa in the east through Toronto and Hamilton to Niagara.

The legislation also establishes a study area for the implementation of a permanent greenbelt. The study area is described in the legislation as including the regions of Durham, Halton, Peel and York, the city of Hamilton and portions of the Niagara region. In addition, the study area also encompasses the Niagara Escarpment planning area north of Peel, as well as the Oak Ridges moraine lands in Northumberland and Simcoe counties.

The intention of the government is to use the creation of a greenbelt around the Golden Horseshoe to contain urban sprawl, the spreading of urban development—residential, commercial or industrial—onto adjacent rural or agriculturally zoned lands. One reason cited as the need to somehow control urban sprawl is the fact that the Golden Horseshoe area is growing by 115,000 people every year. As these people move into the area, they require housing. Along with that added housing goes associated new commercial, tourism and industrial developments.

This proposal is beginning to have significant impacts on farmland within the greenbelt study area. In fact, farmers and farming are now experiencing and will continue to experience the largest impact of this government proposal. We have already heard of farmers who are unable to access operational funding from their lenders due to the fuzziness of the proposal. These farmers are being told by their lenders that their land is worth less, and is projected to be worth less, and therefore cannot be supported by lending for operational purposes at levels they attained before the freeze.

It is reasonable to say that farmers are perplexed with the greenbelt proposal and its long-term impacts. The greenbelt proposal, as it stands, gives no indication of how it will protect agricultural land other than utilizing a land use freeze.

We know the government has said that they chiefly want to contain urban sprawl. However, the current legislation, which we are discussing today, is already pushing development beyond the proposed greenbelt area. Development will leapfrog over the proposed greenbelt. Recent press reports note a proposal, if approved, to convert 6,000 acres of land in south Simcoe county into a city of 115,000 over the next 30 years.

The government makes reference to longer commuting times to work. We have to wonder how long commuting



times will be when increased numbers of GTA workers first have to travel over a greenbelt from a settlement area outside of the greenbelt. The perimeter of the GTA greenbelt fence has already been exceeded by subdivisions. The south end of the city of Guelph is one example. The current greenbelt proposal will push development into Wellington county instead of Halton. Will we really gain anything from this?

The government and the greenbelt task force want to investigate increasing urban density through planning. This is a principled policy, but economically unrealistic in light of population forecasts. There is a need to investigate the determinants of consumer demand for housing, then design, build and market housing that consumers will want on the minimal amount of land.

The Ontario Federation of Agriculture has concluded that the establishment of a permanent greenbelt in the Golden Horseshoe region will have a long-term implication for both farmers whose lands are within the greenbelt area as well as those farmers whose lands are adjacent to the greenbelt.

I would like to outline our issues and concerns. First, with respect to the greenbelt task force and the report, we are very pleased that a farmer representative was appointed to the task force. Considering the breadth of the government proposal and the fact that farmers and agriculture are the single largest landowners affected by this proposal, we believe further investigation is required to address the array of economic viability issues brought forward by this proposal.

We welcome the greenbelt task force's recognition that, "land-use planning alone is insufficient to ensure that agricultural lands within the greenbelt will be farmed." We also agree with the task force's recommendation that a provincial task force on agricultural viability be created immediately to develop agricultural policies that will ensure a viable agricultural industry across the greenbelt and the rest of Ontario.

The OFA must question, though, the membership of the proposed broad-based agricultural task force. Ensuring a viable agricultural sector across the greenbelt and the rest of Ontario means representation on this agricultural task force must reflect every single commodity grown in Ontario. Since economic viability goes to the heart of the agricultural industry in Ontario, farmers must constitute the largest part of the task force membership.

We suggest that this agricultural task force be kept in place to review and monitor implementation of legislation or regulations arising from their recommendations.

We question the timing of both the release of the greenbelt discussion paper and consultation dates, as well as the date recommended for the agricultural task force to submit their interim report on the impact of agriculture. It is springtime in Ontario. Farmers are out in their fields seeding their crops for this year's supply of food. The government is proposing that that sector, which is most affected by greenbelt proposal, will have to take precious time away from their fields in order to present their concerns.

The recommended agricultural task force is required to submit their interim report in October 2004. The government wants rules developed on the proposed greenbelt study area in place by December 16, 2004. If the rules are in place before the task force develops a final report, the entire process is highly suspect.

**Economic viability:** The greenbelt proposal has the ability to destroy the economic viability of farmers in the greenbelt area. Economic viability is the number one concern of the farm community. Farmers are still reeling from the effects of BSE and the US border closing, the high Canadian dollar and other trade pressures. High crude oil prices also adversely affect farmers, as it creates higher diesel, fertilizer, bale wrap and transportation costs. Stats Canada recently released numbers that showed for the first time in history of their records farm incomes across Canada were recorded as negative.

The OFA believes that changes to land use is only one part of the overall equation of economic viability. The greenbelt proposal is silent on plans to encourage farmers within the greenbelt to continue farming. As mentioned, farmers have already lost equity through the zoning freeze. The loss of equity takes away the incentive to further invest in the farm operation. The government must examine mechanisms for compensation for the loss of farmer viability and equity.

Farmers across Ontario also face opposition from some individuals and groups over normal farming practices. The greenbelt proposal demonstrates there will be a need to enhance and strengthen the Farming and Food Production Protection Act to ensure normal farming practices are not threatened by the proposals. This speaks again to the need to preserve the economic viability of farming operations within the prescribed areas.

Farming is not compatible with recreational uses, and there has been very little public action to discourage public access to privately owned farmland. Farmers are already experiencing damage to crops in their green spaces due to the perception that these lands are public, and the government greenbelt proposal may increase that perception. Trespassers drive ATVs, snowmobiles and hike over farmland, interfering with farm practices and jeopardizing safety.

**Environmental protection:** The relationship between agricultural land and natural heritage, water resources, land forms or wildlife habitat, it is unclear in the greenbelt proposal. The proposal does not reflect current agricultural practices that already encourage and enhance heritage, habitat and water. Increasing the area of lands designated for wildlife habitat needs to be well planned, as it could have an impact on adjacent farms. Farmers are facing wildlife predation on both crops and livestock. The proposal is silent on the farmers' rights to protect their property, incomes and livelihoods when faced with this predation.

There are already significant numbers of people living outside the greenbelt study area who are working within it. If development leapfrogs over the study area, this will create more strain on existing roads and, paradoxically,



cause the need for a significant increase in transportation corridors. The population pressure and distances will increase fuel consumption, adversely contributing to environmental degradations. Although the final boundaries have yet to be determined, farmers are concerned the government will respond to development leap-frogging by making the greenbelt wider, which could further erode agricultural activity.

These are only some of the items the OFA has identified as issues around the greenbelt proposal. The greenbelt task force reported late last week, and we're performing an analysis on that document and will certainly respond at the public consultations and the invitation-only round table discussions.

As mentioned, the Ontario Federation of Agriculture will be providing further analysis on the greenbelt task force discussion paper. As there are still so many unknowns in the current legislation and in the greenbelt proposal, the Ontario Federation of Agriculture recommends that all members of the Legislature consider these immediate concerns in their deliberation:

1700

The OFA believes that long-term protection for all farmers, regardless of where they farm, must be considered.

We have already experienced confusion by municipal councils in the interpretation of the rules around the Oak Ridges moraine. For example, some municipalities are telling some farmers they cannot erect outbuildings on their property in one part of the moraine, yet others are able to build. A clear, concise, stated policy on governance is required before the implementation of any greenbelt legislation.

With that, I'd be pleased to take any questions.

**The Chair:** Thank you. We have approximately eight minutes left. I'll go to Ms Churley.

**Ms Churley:** Thank you for your presentation. I wanted to get some clarification on your position, because it seems to me from your brief that you generally support greenbelt legislation, but you're expressing concerns about the timing and the consultation process with you. Am I right about that?

**Mr Bonnett:** In general, the concept of protecting agricultural land is a high priority for us, but you have to put it in context. When you get into urban development, if there's a type of urban development that takes place that hacks and cuts up farmland so that all of a sudden you have very unviable parcels, then the issue becomes not whether farming's going to continue; the issue becomes what type of farming could afford to continue farming in that area, just because the cost of production actually gets out of place.

**Ms Churley:** I understand. One of the issues that came up in St Catharines, and you didn't mention it specifically, was severances and the concern around that. I assume you're also thinking about that. Given the situation we have right now and the fact that quite frequently developers have more money than perhaps somebody who wants to expand their farm or build a

house on that severed land or whatever, developers are buying up some of that severed land and sitting on it. Isn't that also a concern right now and one of the things that we're trying to resolve?

**Mr Bonnett:** The whole issue of whether developers are buying up land actually goes to the heart of our discussion document. You have to address the viability issue. If farmers are actually making money on that property by farming it—

**Ms Churley:** Exactly.

**Mr Bonnett:** —they're not going to be susceptible to bids to turn that into houses, because they know that's a one-time shot. That is why we say there has to be a considerable amount of discussion going into addressing, what are the issues affecting farm viability in the GTA? Once you have solved some of those viability issues, then there won't be that extreme pressure to convert that to development land.

**Ms Churley:** That can deal with that severance issue.

**Mr Bonnett:** Yes.

**The Chair:** Thank you. Mr Rinaldi.

**Mr Lou Rinaldi (Northumberland):** Thank you very much, Ron, for your presentation. I guess my question follows somewhat Ms Churley's question. Not too long ago, we threw our municipal hat into the riding of Northumberland with some of your good friends, and for the past 12 years—and I just need some clarification on this—we were lobbied. We had a farming advisory committee to help council determine best practices in rural Ontario and we were constantly lobbied to protect farmland. God forgive, we'd give a severance and we'd have a number of farmers in my community on our backs.

I guess I find it a little bit of a controversy, or it doesn't quite jibe, because just a few months ago I was lobbied to protect our land because it's viable. You know, they don't make any more land. We need to protect good agricultural land. And yet here you show some concerns about—and the argument we're using, I must say, is that we cannot go to our banker because the few severances that you've given take away from the viability of the farm and puts restrictions on it. Yet today, we seem to be talking a different language. I guess I need some clarification.

**Mr Bonnett:** Well, this whole issue and getting into the severance policy—one of the things that we, as an organization, have wrestled with is what type of severance policy would be allowed. Quite often, you have to realize it is very difficult to have a severance policy that is uniform for the whole province. The severance policy in northern Ontario is not going to be the same as it is in Northumberland or in the GTA. Maybe you have to look at different tools that would encourage different severance policies to work.

One of the things that quite often comes up in discussion is, normally on agricultural lands there are provisions in a number of municipalities where you can sever off one lot for a retirement dwelling. Some municipalities have actually banned that practice right



now and others are taking a look at it. We're saying, maybe we should take a look at some other tools. If you have an urban development area that's springing up in an area, maybe you could do a trading mechanism with the farmer who wants that retirement dwelling off that existing policy so that they do get a retirement dwelling, but it's on land that's part of an urban development area.

Those are the types of things that we want to look at: looking at the policy and finding out what types of tools are going to get the objective. If you go down to the core issue of the viability of farms, you have to have this concept that farms are only viable when they're kept somewhat in blocks. I think that's where you have to do it from a long-term planning perspective: identify where those blocks are and put the tools and policies in place to try and maintain those blocks. If you don't have that, then you don't have the viability; if you don't have the viability, then farmers are forced into situations where they're looking for other ways to raise income off that property.

**Mrs Van Bommel:** Thank you very much for your presentation. It's good to see you both. You mention in here the Farming and Food Production Protection Act and the issue of normal farm practices. In St Catharines we heard a lot about the severing of surplus buildings. From my own personal experience I know that in doing those types of severances there are often occasions for a conflict between the new owner of that house and the farmer who is still practising his farming around that house. How would you foresee the Farming and Food Production Protection Act working in order to allow that kind of surplus severance, or do you see that it might actually create further problems?

**Mr Bonnett:** I'm not sure that I would use the Farming and Food Production Protection Act with respect to the severance policy. The reference we were making there was more with respect to farmers wanting to expand their operations, build new buildings, using normally accepted practices, whether it's using fertilizers or herbicides or whatever, and to make sure there weren't policies put in place that restricted them from doing things that every other farmer in the province would do.

With respect to the severing of the surplus dwellings, I think that is where you get into the discussion of, do you develop some kind of a mechanism where you decide that that land has too many houses on it already in order to be viable, and therefore it should be allowed to separate those surplus dwellings, or if there still is that block nature of land there, maybe you should have some kind of a trading option that that lot could go back to the original. But the farmer who owns that land shouldn't lose that equity position because of that. Maybe that could be traded off.

I think sometimes you have to take a look at, if the public policy is that these blocks are going to be protected, then there has to be an understanding that the general public has to pay for those types of programs that are going to do that. In the case of that surplus dwelling, maybe there has to be a cash settlement and that house

then becomes part of that agricultural property; but just to take that equity away from that person, all of a sudden you're back into that viability discussion again.

**Mr Hudak:** Thank you very much for the presentation. I think that one lesson I'm afraid is being missed about what we heard in Niagara is that the agricultural community and commodity groups and municipal representatives that came forward basically said, "It's working very well, thank you very much," in terms of making local decisions on severances and where they're appropriate.

The big fear I have in the approach of this government under Bill 27 and Bill 26 is how much power is being sucked up in the Minister of Municipal Affairs's office to make those types of decisions about what proper uses are in rural Niagara, for example.

Maybe you could give us some opinion on what level of discussion should be at the provincial level of control and how much should be at a local level in terms of issues of severances and of land use zoning.

The second part: Can you give me some specifics on policy changes that will help the viability of our farms, so that if you save the farmer, you can save the farmland? Particularly you might want to talk about the Beaubien report and other such ideas.

**Mr Bonnett:** You gave me a pretty wide-open question there.

I think, first of all, with respect to the decision-making process, there is that responsibility at the local level. Like I was saying before, the same policy doesn't necessarily apply in the north and the east and the GTA. However, I think there are some general policy guidelines that can be put in place that have to be addressed by local municipalities and local groups when they're addressing it.

1710

We had the same discussion in our same organization. We were suggesting that before any land be severed off existing farm policies, there should be a stamp of approval by a local agricultural advisory committee, which a number of municipalities already have in place. So I think having that mechanism to get a local judgment from an agricultural perspective would be good, if it was mandated that all municipalities had an agricultural advisory committee to give advice on that.

With respect to the viability issues, there are a number of things with respect to taxation, taking a look at tax levels. One of the issues that is becoming a real problem for a number of farmers in the GTA is the fact that the assessment values have risen so high that all of a sudden they've got a tax burden that's quite a bit higher than farmers in other parts of the province. We've actually made some suggestions on taking a look at some new mechanism for figuring out how to assess farmland property.

I think using tools like that, from a policy perspective, would address the viability issue. But then, going back to your question about local decision-making, you have to have that local flavour in it as well.



**The Chair:** Very good. Our time has expired. Thank you for taking the time to make the presentation.

### GREATER TORONTO HOME BUILDERS' ASSOCIATION

**The Chair:** The next group is the Greater Toronto Home Builders' Association, Mr John Alati and Mark Parsons. On behalf of the committee, welcome to the public hearings on Bill 27. You have 20 minutes, and you could leave some of that time for a question period at the end.

**Mr John Alati:** Thank you, Mr Chairman and members of the committee. Mr Parsons is actually going to begin. I'll turn it over to him now.

**Mr Mark Parsons:** Thank you very much. With me here today, of course, is Jim Murphy. Jim Murphy is our government relations person at the Greater Toronto Home Builders' Association. I am their current president. During my day job, I am vice-president of construction for Monarch Homes, which builds about 1,000 houses in and around the GTA, through to Kitchener and Ottawa.

Restrictive land use policies are driving up the cost of land exponentially in the GTA. As all of you will know, land is the single largest component going into the construction of a new house these days. It runs about 35% of the cost of that house. When this figure increases dramatically, so does the end cost of the home to the consumer. Restrictive land policies are increasing house prices in the GTA especially. Homebuyers are being forced out of the market by the high cost of land. Don't get me wrong. I know that the new home market here in Toronto is good. This year, we will sell about 47,000 new houses, but we have 125,000 people a year migrating to the GTA area.

What is supporting this strong sector right now? Certainly not government policy. It's low interest rates, the lowest interest rates in 50 years. Remove those and affordability goes out the window. The average mortgage in Toronto is about \$200,000. At 5.4%, it carries for about \$1,200 a month. If the rate jumps just 200 basis points, that mortgage goes up to \$1,450, meaning that to try and afford that mortgage, a person making \$54,000 would have to earn an additional \$9,000 a year, or a 17% increase in order to afford that house.

We have three papers here before you today, which we've handed out. One is entitled Turning Dirt into Gold, which I will look at. We have another publication here, Powerhouse, which indicates to all of you how important the construction and renovation industry is to the province and to the country. We have a paper here which we will talk to you about called Growing Strong Communities or Growing More Uncertainty?

If you look at page 3 of the Turning Dirt into Gold paper, you will see that the increase in new home prices has been dramatic. The end price of a new home is between a 9% and 18% increase. Already, housing is becoming unaffordable for the average GTA buyer. If you look at the most affordable product type, which is the

22-foot townhouse lot, it has increased by almost 50% in two years. This report, believe it or not, is a couple of weeks old and already prices have changed. I have heard of prices north of Toronto of \$7,000 a running foot for a 22-foot townhouse lot, which equates to \$154,000 just for the lot alone. That house will sell for well over \$300,000.

The GTA, believe it or not, though, is one of the most densely populated regions in North America, behind New York and Los Angeles. The average lot size in the GTA is 38 feet—that's not a big lot—and the smallest lots are the ones increasing the fastest. So obviously affordability at the lower end is being affected dramatically.

How do we intend to promote intensification by increasing the prices of our smallest product through restrictive land use planning? Not everybody wants to live in a condo, I have to add. Approximately 30% of the GTA market already is comprised of high-rise condominiums. Although sales remain healthy in the condo market, many economists are predicting an oversupply. There are about 18,000 units somewhere in the market that are coming into supply in the next year and a half. Who will want to invest in that market if that oversupply is not already taken up?

Our industry is doing extremely well, as I said before, but we are under siege from all levels and many different forces: increasing city development charges—many cities are trying to increase them, especially in Toronto, by as much as 150%; educational development charges; talk of hospital levies; higher labour prices—they're going up about 6% a year; and of course material costs. More recently, with oil being more expensive, we're already seeing increases in shingles, carpet and plastics, all the things that are derived from petroleum-based products. Material costs are going up by about 5.9% a year. So you can see the GTA is becoming an increasingly expensive place to try and afford a new home.

To top it all off, what does the federal government do? They kick you in the teeth with the GST. You get no rebate at \$362,000, so you're paying the full 7% GST on every single new house. Every single new house you buy is comprised, believe it or not, of about 25% in taxation. I was driving by the gas station the other day and I see that gas is probably fighting the same sort of battle we are. They gave me this sheet which explained what portion of that product is taxation. Our industry isn't far off that mark. Taxes there are 43%; we're down around just below 25%, and housing is an essential thing to have.

Our industry doesn't have any argument, though, with saving environmentally sensitive lands. We just want to save lands that are determined to be environmentally sensitive through science or good environmental planning.

In a way, we are victims of our own success here in the GTA. We are amongst the best cities in the world to live and, as a result, we're not able to stop growth. We need to plan for future growth. As Mark said, the GTA is going to grow by another 2.4 million people by 2031, and we need to plan for that growth because it's going to happen whether we like it or not. Restricting growth in



areas not deemed environmentally sensitive isn't good planning. It will simply encourage the development industry and people themselves to make choices outside the greenbelt: Barrie, Kitchener to the west, wherever it becomes more affordable. They'll go where they have to go to find a place to live as close as they can to work.

We need the government to write a strong provincial policy statement allowing intensification along all of the major corridors in Toronto, so our industry is not constantly on the defensive from people in the local area who oppose higher densities.

We also have to have people living in the 905, because changing people's tastes is extremely difficult. You will not get the entire market willing to live downtown in a condominium. People want a piece of grass.

If you don't believe those arguments, the economic arguments are even stronger, I believe. Our industry creates a quarter of a million jobs in Canada every year, \$10.4 billion in wages, \$5.4 billion in taxation and \$17.9 billion of the national GDP—that's 10%. Our industry has to keep rolling in order to keep the economy moving.

Thank you for your time. Please help us keep building.  
1720

**Mr Alati:** I'm going to speak to some of the GTHBA's direct concerns with the legislation that is before you. Comments on Bill 27 begin on page 3 in the submission, the green-coloured paper that is in your package.

Bill 27 and the minister's zoning order, regulation 432, which accompanied it, freeze for up to one year lands in the study area to determine which lands should be in a greenbelt. Lands outside urban areas are prohibited from applying for approvals. The greenbelt task force discussion paper is out for discussion as of last week.

Bill 26 and Bill 27 grant new powers to the minister. The minister can defer OMB hearings, stay proceedings before the OMB and pass regulations to exempt lands from these prohibitions. This is a huge and, in my view, overwhelming centralization of power at Queen's Park.

While there is talk of municipal empowerment, the actual text of the legislation suggests otherwise. Several municipalities, like Pickering and Brampton, had full growth management studies underway and in process that may have led to urban expansions to meet some of the needs that Mark just referred to. They have been stopped, and the questions that beg being asked are: Don't these municipal officials know what is best for their own communities? Shouldn't they at least be entitled to complete the growth management studies that they began so they can deal with these pressing questions and issues of growth? Does the province support local decision-making or not? Similarly, private applications that may have led to urban expansion have also been stopped.

Worse yet, the minister, with new regulations, will be able to determine which lands may proceed and which will not. This isn't fair. It's not good policy and it's not transparent. It can lend itself to an ad hoc approach that is

not transparent, and even more disturbing is that these measures can be retroactive.

The legislation even goes further and seeks to bar all claims for compensation arising out of the legislation's application. In short, this is tantamount to expropriation. We believe this is unfair and simply wrong.

The legislation requires amendments and changes. While we have outlined a number of the changes we believe are necessary in Bill 27 in the paper before you, I'm going to emphasize just a few.

The first would be that all references to retroactivity in the legislation be removed. Let those applications that were caught by this legislation proceed under the rules and laws that were in place at the time the applications were made and the hearings, if there were any, commenced.

Actually empower municipalities by amending the legislation to allow local municipalities to grow and plan as they wish in accordance with the provincial policy statement, not as Queen's Park wishes.

Thirdly, establish clear criteria for which applications are appealable to cabinet. A time frame for decisions by cabinet should be added, as well as a listing of the reasons for cabinet's decisions, so that people can clearly understand why cabinet decided what it did.

The planning process has to be transparent in order for it to be effective. It should not be conducted behind closed doors and there should not be an opportunity for the perception that decisions of this nature can be conducted behind closed doors.

Thank you for the opportunity. Mark and I would be pleased to answer any questions the committee may have.

**The Chair:** Now it's up to the government. Any questions on this side?

**Mr Wayne Arthurs (Pickering-Ajax-Uxbridge):** Just a question with regard to the capacity over the next 10 or so years. Some of the discussion tends to be around the fact that prices are being driven, there are no lots available, and whether it was the Oak Ridges moraine legislation or this proposed legislation that is driving this agenda. In your submission, there is a reference on the back of the last page that the current supply is a some 14-year supply in the GTA. Is that a 14-year supply within the existing urban boundaries? Is that what that is intended to say?

**Mr Jim Murphy:** I might answer that, Mr Arthurs. We did a report at GTHBA last year, that Hemson did for us, that said at that time there was only a 16-year supply. It was two years ago that the report was done, so we're down to a 14-year supply GTA-wide.

**Mr Arthurs:** I have a great degree of respect for Hemson's work. I don't whether Ray Simpson is still doing work for them.

**Mr Murphy:** That's who did the report.

**Mr Arthurs:** I recall in the early 1990s they were projecting populations and people were boo-hooing it because things were going slowly, but it's all coming to pass.



Within the existing context, though, recognizing that it takes—I'll use a 10-year time frame; you're using a 15-year, but nonetheless—to take it from raw land to the build time frame, there is still substantive capacity within the system of currently approved land within the urban envelope; maybe not fully zoned, but within the urban envelope. Is that, in effect, what that's saying?

**Mr Murphy:** It varies by municipality, obviously.

**Mr Arthurs:** Of course.

**Mr Murphy:** The example that was used in that report was Milton, which took about 16 or 17 years to come from the first study that was done for Halton region to the first purchaser assuming occupancy. If you take that as a figure to go from raw land to actual occupancy, we're over that time period, which is one of the reasons the alarm bells are starting to ring. But there are some municipalities like Burlington and Richmond Hill that have probably only a two- or three-year supply of lots.

**The Chair:** I'll go to Mr Hudak now because we have to split the time.

**Mr Hudak:** Thank you very much, gentlemen, for the presentation. I think this notion of substantial capacity is just answered by the price effect. If there's lots of capacity, you wouldn't see these significant spikes, right, in vacant lot or housing prices that we see today. If they're going up 30% to 40%, you're looking at the prices doubling in three years' time, if that's consistent.

Let me ask you this. Maybe I'm the heretic here. I kind of like driving. I kind of like having a lawn and a garden. Most of the government members speak to the notion that we're all going to live in apartment buildings in Toronto. You can intensify the area, and I guess there won't be many NIMBY issues about high-rises going up in somebody's backyard in the Lawrence Park area. Who's realistic and who's being Pollyanna?

**Mr Mark Parsons:** I think the answer to that question is that consumers need choice. I outlined the current choice they are making in the GTA market when they're buying new housing, which is about 30% condo and 70% low-rise. So changing that perception or that want is going to be extremely difficult. The only thing that will do it in the end—you can't legislate that. They won't change simply because of legislation. Prices will change that. Unfortunately, the consequence of changing people's perception is making housing unaffordable or forcing everybody downtown, which isn't, I don't think, going to work.

**Mr Hudak:** If you also look at some of the changes in the sister bill, Bill 26, with respect to municipalities being forced to "be consistent with" as opposed to "having regard to," what do you think the result is going to be of intensification projects in downtown areas like Toronto, where you have a sophisticated, motivated and well-financed group of local taxpayers? Are they willingly and with great embrace going to accept intensification efforts in Toronto?

**Mr Alati:** That would be contrary to the history I'm familiar with working at the OMB. I can tell you that we've been involved personally in intensification pro-

jects on top of the subway line, and there has been continuous and consistent opposition to that, whether well financed or not.

I think it takes time to change perceptions. I'm certainly not opposed to intensification along major corridors and avenues like high-transit lines, but certainly neighbours will quickly jump to the fore and suggest that it's a change in something they're used to and something they don't want to see.

I don't think anyone's being Pollyanna in recognizing that it's something that has to come in order to accommodate the large population increase that's expected here in central Ontario and in the GTA, but I don't think it can be done in isolation of requiring growth of urban municipalities and proper expansions. It does reflect the need, as well, for nodes in corridors, but expansion nevertheless.

**Mr Hudak:** Any suggestions on a governance model for when the greenbelt becomes permanent?

**The Chair:** Thank you, Mr Hudak. The time is up. I'll go to Ms Churley.

**Ms Churley:** Thank you very much for your presentation. I want to ask you a question because I've been really alarmed by a speaker that the Greater Toronto Home Builders' Association had at an event on May 5, Randal O'Toole. I don't know if you were there or not—

**Mr Mark Parsons:** I was.

**Ms Churley:** —but he spoke of the need for the complete deregulation of the land market to "remove all obstacles for landowners."

He also said, "Imagine that almost every city, county, town and village in the United States has at least one communist on its staff—not an infiltrator, but someone whose job title is communist, whose job description is to implement communism in that community. Difficult to believe? The most important part of Soviet communism is central planning. Now go back to the previous paragraph and replace the word 'communist' with 'planner' and 'communism' with 'planning.' Then the paragraph turns out to be the truth."

I'm quoting him. That's pretty alarming stuff. I guess my question would be, just what are you supporting here? Do you support that?

**Mr Mark Parsons:** No, of course we don't support that. The reason for bringing Mr O'Toole here was to bring a different view to planning. The reason the GTHBA brought him here was to give a different perspective on planning. It was to try and stimulate discussion, and obviously it has done that, because you've noted—

**Ms Churley:** Indeed, it has.

**Mr Mark Parsons:** However, he does have numerous interesting ways of trying to deal with sprawl. As I said before, his theory is that you cannot change consumers' choice. You cannot change their perceptions of what they want. They will buy based on how much they can afford and where they can live, and they'll live as close to work as they possibly can.



1730

**Ms Churley:** But you do accept that there is an urban sprawl problem and all the issues around it that have been mentioned here and will continue to be mentioned? What is your answer to that?

**Mr Mark Parsons:** Part of Mr O'Toole's presentation was that—and I don't know how strongly this came forth—the government has to invest more in our road systems. It's not so much controlling development; it's increasing transportation systems, public transportation, different types of public transportation. He was a proponent of private transportation systems; not huge buses, not streetcars, but smaller, more nimble buses to get people from nodes to the larger transportation systems, improve our highways and traffic to move people faster. One of his thoughts was more toll roads.

**Ms Churley:** What about the pollution from all that transportation?

**The Chair:** Thank you. Our time is up. Sorry about that.

**Mr Mark Parsons:** If you move faster, the car burns less fuel.

**Ms Churley:** We could go on with this discussion.

**The Chair:** Once again, thank you for taking the time to make the presentation to the committee.

#### ONTARIO PROFESSIONAL PLANNERS INSTITUTE

**The Chair:** The next group is the Ontario Professional Planners Institute. Donald May, you're accompanied by—

**Mr Donald May:** To my right is Melanie Hare, who's a member of our policy development committee, and to my left is Loretta Ryan, who is our staff manager of policy communication. Our recommendations are contained in our letter to the minister dated March 10, 2004.

Thank you, Mr Chair and members of the committee. My name is Don May. I'm the president of the Ontario Professional Planners Institute. I'd like to thank the committee for the opportunity to speak today.

The Ontario Professional Planners Institute, also known as OPPI, is the recognized voice of the province's planning profession. OPPI provides leadership and vision on policy matters related to planning, development and other important socio-economic issues. Over the years, OPPI has contributed to the reform of planning in Ontario. We have demonstrated a strong commitment to working with all governments.

As the Ontario affiliate of the Canadian Institute of Planners, OPPI brings together all of Ontario's professional planners and represents more than 2,600 practising planners across the province. In addition, there are approximately 400 student members. The breadth of our members' knowledge and the diversity of their experience provides OPPI with a unique perspective from which to contribute to planning reform.

OPPI members work for government, private industry, a wide variety of agencies, not-for-profits and academic

institutions. Our planners engage in a wide range of practice areas, including urban and rural community planning, design and environmental assessment. OPPI is a professional association funded entirely by membership fees and program and activity revenue.

Through our public policy program, we conduct research on planning and general quality of life issues. We distribute this information to our members, government, the media and the public. Our purpose is to provide objective and balanced submissions based on the collective experience and wisdom of our members.

Included in the package that we have prepared for the committee is our submission to the government on Bill 26 and Bill 27, and two documents that we think will be of interest to you: Exploring Growth Management Roles in Ontario: Learning from "Who Does What" Elsewhere, the author being Melanie Hare, and our position paper on the Oak Ridges moraine. It's interesting to note that with respect to the Oak Ridges moraine, the government of Ontario has proceeded with actions that reflect our recommendations.

We are pleased that the government is committed to improving the land use planning system in Ontario. If the proposed legislation does not give communities a complete range of usable tools, it will simply complicate the planning process rather than make it more responsive to local needs.

At this point in time, we would like to provide comments on three specific areas as they pertain to Bill 27: (1) the importance of the provincial policy statement; (2) the need for definitions; and (3) effective growth management.

In terms of the first matter, the importance of the provincial policy statement, the provincial policy statement sets out overall policy direction on matters of provincial interest. The review of the PPS has been underway since 2001. The importance of this planning document to Bill 27 cannot be overstated. While the PPS may not garner as much attention as some of the other major initiatives the government has unveiled, it is the tool that makes everything else work. The review should be finalized and action taken to implement the revisions as soon as possible.

One area of implementation that must be addressed is how to ensure that planning decisions are consistent with the PPS. Although the wording "be consistent with" is intended to result in decisions more closely reflecting the intent of the PPS, there needs to be clear guidance on how competing interests might be balanced. It must be made clear that there is room for practice planning decisions. You do not want literal interpretations or minor inconsistencies in phraseology to cause good planning to be delayed or frustrated.

One of the essential elements of planning is balancing social, economic and environmental interests. Planning involves an objective, independent, comprehensive analysis of all resources and the application of all pertinent policies. Without clear direction on the province's priorities for environmental protection and com-



munity growth and on what to do when conflict occurs, the new wording provides continued challenges. Exactly what are municipalities expected to “be consistent with”?

Finally, the PPS review provides an excellent opportunity to develop a coordinated framework through which the government sets an overall direction for growth in the province. In particular, the framework should include guidance on regional-scale planning issues, such as transportation and infrastructure development, which need to be established on a province-wide basis. Within such a framework for growth, the PPS can allow for flexibility so that individual communities—rural areas, small cities, northern Ontario, the GTA—can make decisions that respond to local needs. This flexibility must also address the ability for some municipalities to go beyond the minimum standards in the PPS and still “be consistent with” provincial policy.

The second point is effective growth management. Our policy work on growth management, *Exploring Growth Management Roles in Ontario: Learning from “Who Does What” Elsewhere*, dated September 2001, suggests that greenbelts are not an effective growth management strategy in isolation. We support the concept of greenbelts. We’re saying that it’s part of a comprehensive process. Greenbelts are part of a package of tools that can address growth management. There should be provision for appropriate land uses within greenbelts. Furthermore, municipalities, landowners and the development industry may need an economic incentive to protect land and to respect regional planning strategies. We’re pleased to note that the recent discussion paper from the Greenbelt Task Force is recommending a separate task force on agriculture to ensure agricultural viability.

The areas affected by Bill 27 are under immediate development pressure. However, other areas face similar pressures for boundary changes. The province needs to take a big-picture approach and create a vision that applies to the whole province, not just a specific region. The province should give all areas that face development pressure the benefit of time to study key areas and identify ways to protect specific lands and contain urban sprawl. Including the principles of growth management in the current planning reforms provides an opportunity to strengthen the environmental policy framework and review the effectiveness of current environmental protection policy within the context of economic development and infrastructure planning.

To this end, we encourage the province to explore tools complementary to greenbelt protection zones and other effective growth management strategies. OPPI will be participating in stakeholder consultations with Mayor MacIsaac and the Greenbelt Task Force in order to further explore these tools and other aspects of the Bill 27 legislation.

1740

The third point is definitions. The definition sections require further refinement to achieve what the province intends. For example, in Bill 27 as currently worded,

much activity in the rural area can be seen as non-agricultural. Certain legitimate activities in the rural area must, of necessity, locate in rural areas. An example would be mineral aggregates extraction. Legitimate rural uses should not be affected by the government’s initiative to limit urban sprawl. It would be more appropriate, in the context of Bill 27, to state what is not intended for rural areas; specifically, no urban uses.

As I mentioned earlier, we are particularly concerned that a working definition of “be consistent with” be clearly established, so that municipalities understand what is intended by the phrase and how it is to be applied, recognizing that the application will vary from circumstance to circumstance. To clarify intent, the province should ensure that identical definitions are included in all planning reform legislation.

In summary, OPPI is dedicated to the promotion of good planning and would welcome the opportunity to work with the Ministry of Municipal Affairs, the Ministry of Public Infrastructure Renewal and its Smart Growth secretariat, and other ministries to help explain publicly the critical importance of managing growth, given the significant amount of land already approved for development in growing Ontario municipalities.

Ontario’s registered professional planners have a great deal to contribute to both the policies and mechanics of better planning, with an unparalleled knowledge of how to make the government’s policy directions actually work effectively across the province. We encourage you to use OPPI’s resources in planning for growth management, economic development, environmental policy and effective public engagement as part of the plan to bring change to land use planning in Ontario.

As the proposed legislation evolves and our members have more opportunity to comment on specific aspects of the legislation, we may provide additional comments. In addition, over the coming weeks, we will be participating in a number of stakeholder consultation sessions and providing input on key ministry initiatives. We would be pleased to answer any questions.

**The Chair:** We have approximately eight minutes left.

**Mr Hudak:** I think you make an excellent point in saying that greenbelts on their own are not an effective growth management strategy. I do worry about the way this bill was born: more of a political process, I think, to try to make up for some lost ground with green stakeholders after the Premier’s flip-flop on the Oak Ridges moraine commitments. As a result, the cart is very well ahead of the horse. In fact, I think it’s about to lap the horse.

We’re seeing pressures go elsewhere, as you heard from the previous deputations. We’re seeing farmers lose equity in their farmland and their inability to get loans to develop their properties and their businesses.

One thing you suggested, and hopefully we can still do this: You recommend tools complementary to greenbelt protection zones. You didn’t have much chance to go



into detail, although your further report does, from experience elsewhere.

**Mr May:** I think Ms Hare could speak to that.

**Mr Hudak:** Great. Summarize to the committee some of those complementary tools.

**Ms Melanie Hare:** Sure. There are quite a few of them. The study actually looked at six different municipalities in North America. I won't take you through the long list; it's in the report. I think it's fair to characterize them, relevant to greenbelts particularly, in four different ways.

One is that it's very important that a regional approach is taken, which I think is the direction the government is going. In policy frameworks and administratively, as we come forward with greenbelt legislation and the task force recommendations, it is important that there is a regional understanding and direction for that. So there's the whole importance on the regional level.

In addition to the contemporary versions of urban growth boundaries, of which there are a number of examples, always balance what happens within the boundary with what's outside the boundary. So when we hear the home builders speak about pressures elsewhere, one of the dangers of an urban growth boundary, or greenbelt, approach is that you will just be encouraging leapfrogging, and then you haven't in essence addressed the issues. You've just pushed it further out.

There are some very valid and interesting tools for ensuring that there's protection of the greenbelt area through conservation, easements and all sorts of land assembly tools, but also understanding what your intention is for the other side of the greenbelt. The examples we have in Canada—Ottawa, Vancouver, and to a certain extent the Niagara area—will help us understand the fact that you need to have a plan for the other side of the line as well as what's within the line.

Greenbelt planning, in our experience and evidence, suggests it's very important to understand what the objective is. It is not, in itself, an effective means of controlling sprawl—there are other growth management strategies that are good for that—but it is important to understand the objective. If it's preserving natural systems and natural heritage, that's very valid; if it's open spaces and networks, that's valid; if it's agriculture and other uses, that's valid. It's important that there be not only a set of strategies within the boundaries but also strategies outside the boundaries so there's a balance there.

There's the approach of targeted investment—

**The Chair:** Our time is up. I'll go to Ms Churley.

**Ms Churley:** I have a different question. You talked about "be consistent with" provincial policy statements as opposed to "have regard for." As you will recall, the NDP government brought in what we called a green planning act, after John Sewell and others went out and consulted across the province, and we brought in that wording. The previous government took it out, and it looks like it's coming back. You raise a very good point

about being as clear as possible what we mean by that. I just wanted to say that I agree with you on that.

I wanted to ask you—unless you have a comment on that, but I understood what you were saying. Coming back to leapfrogging, it's a problem that's been identified and will continue to be identified within this. I agree with the position that you need to bring some of those areas into the greenbelt plan in order to avoid that. I guess the question is, how do you see this kind of planning? I think the leapfrogging issue is a huge one, and it's clearly going to happen with the greenbelt as it's now proposed.

**Ms Hare:** It's important to understand what happens within the greenbelt and beyond it, and that there's a plan for both of those. There are ways of creating incentives for the kinds of development that are permitted within the greenbelt and beyond, whether they be financial, policy-based, carrot financial incentives—easements and other means—land trusts and other forms. It's important that we balance the consideration within and the objective, and then understand that there will likely be an impact outside the greenbelt and plan for that area as well.

**The Chair:** Mr Parsons.

**Mr Ernie Parsons (Prince Edward-Hastings):** While pursuing my engineering degree, I took one course in planning, which means I know just enough to be really dangerous.

The problem, as I see it, is rapid growth and trying to manage it. As a planner, is there a time when you say, "This city is big enough"? I represent a riding, the wonderful Belleville-Picton area, where the population is declining. Is there a time when, as a planner, you say, "No, that's all this city can deal with," whether it be water or traffic, "Let's encourage development in Belleville"?

**Mr May:** I think where there are natural features that are so significant, such as the Oak Ridges moraine, which we supported as a significant feature, and the Niagara Escarpment. When you look at those features, they come into play as being very important. So a community such as Burlington, where I come from, is running out of opportunity because the escarpment is right there and rimming, and we have the lake on the other side. It becomes an issue of lack of opportunity, so the city has to do other things. Over toward Whitby, there may be more expansion before they get to the Oak Ridges moraine, where it is possible to do something in that area.

What I'm answering to your question is that nature has a certain effect as well, and we have to factor that in, as we respect—

**Mr Ernie Parsons (Prince Edward-Hastings):** But should politicians get involved in that?

**Mr May:** Absolutely. You have to provide the direction. Ultimately, in planning we make the recommendations; you make the decisions. That's where the decisions are made.

We, as planners, provide objective review, we provide options, competing interests—we'll give you something—but the Planning Act gives politicians the ultimate



decision in the way we make planning decisions. You have that responsibility.

**The Chair:** Thank you very much. Everything has been recorded, and the questions and also your presentation will be in Hansard.

1750

#### AIRD AND BERLIS LLP

**The Chair:** The next group is Aird and Berlis. Ms Patricia Foran, welcome to the standing committee on general government public hearings on Bill 27.

**Ms Patricia Foran:** My name is Patricia Foran. I'm with the law firm of Aird and Berlis. I represent E. Manson Investments with respect to lands it owns in the town of Richmond Hill. I'm joined by a representative of my client, Ms Mai Somermaa.

By way of background, I provided to the committee a brief document submission. Our clients have owned approximately 98 acres of land in the town of Richmond Hill, at the northwest corner of Leslie Street and 19th Avenue, since the mid-1980's. Since 1997, they have had development applications active with the town of Richmond Hill, with the goal of permitting urban land uses on their lands.

I have included at tab A a colour map generally indicating the location of the land, as well as some statistics with respect to the land holding, its area and the amount of the land that is proposed to be set aside for a natural heritage or environmental system, as part of our client's development applications.

Our client's applications were commenced as part of Richmond Hill's own urban boundary expansion exercise, which considered not only our client's lands but other lands as a logical extension to the town's urban boundary in the late 1990's. Our client's applications were subsequently appealed to the Ontario Municipal Board. Along with lands to the south of 19th Avenue, known as the Bayview East Landowners Group—and you heard from their representative, Mr Davies, this afternoon—we are part of a hearing known as the North Leslie OMB hearing, which has been in progress, through the pre-hearings process, since 2002. Our client's development applications have therefore been in progress for a considerable period of time. They have already been subject to a freeze once before by the previous government, to deal with the Oak Ridges moraine in 2000.

We have a threefold purpose in addressing the committee this afternoon: (1) to request that you amend Bill 27 to delete the E. Manson landholdings from the greenbelt study area; (2) that you amend section 14 of the bill, which proposes to amend the transition provisions under the Oak Ridges Moraine Conservation Act as it is presently drafted today; and (3) that you consider revoking the minister's zoning order, passed pursuant to regulation 431/03, pertaining to a portion of our client's lands that lie on the Oak Ridges moraine.

In contrast to the landowners to the south, as part of the OMB process, our client has actually reached a

substantial agreement with the environmental experts, retained by both the town of Richmond Hill and the region of York, as well as the Toronto Region Conservation Authority, on the environmental features of interest on our client's lands, their function in an overall natural heritage system and the necessary buffers to protect and enhance those features. Those environmental features would be secured through the approval of our client's development applications.

I have included at tab B what is probably a very helpful visual aerial photograph of our client's lands. The black line depicts the Oak Ridges moraine limit, which traverses our client's property. Everything to the north of that land is on the Oak Ridges moraine technical line. To the south of that are lands that are in fact off the moraine. The middle area, where you see a wooded portion outlined both in red and yellow, represents the natural heritage system that has been agreed upon by both my client's experts and the various agencies' experts as the necessary natural heritage system, including the environmental features that are in issue as part of our development applications. We propose to set that aside as part of our client's development application. There is no substantial disagreement between our client on that portion.

It's also interesting to note, with respect to the aerial photograph, that the environmental features are in fact located largely off the Oak Ridges moraine. There aren't any substantial features identified on the moraine itself. Given that this is the southern limit of the moraine in this part of the province, it's not surprising that an arbitrary line was chosen. It was not meant to reflect any particular features.

The balance of our client's lands, which are off the moraine, are what the town, the region of York and the Toronto Region Conservation Authority all agree are lands that are appropriate to include within the urban boundary of Richmond Hill.

I wish to correct on the record a statement Mr Davies made earlier this afternoon when he indicated that it was his understanding that there was a disagreement between my client and the agencies with respect to the lands north of 19th Avenue and the inclusion of those lands in the urban boundary. In fact, the town and the agencies have filed expert witness statements with the Ontario Municipal Board which indicate that those lands lying south of the moraine limit are in fact agreed upon as necessary and appropriate to be brought within the town's urban boundary.

In our submission, given the substantial protections already in place under the ORM legislation, combined with the desire by the town that a substantial portion of our client's lands be brought within the urban boundary, leads us to believe that there are no further environmental protections that could be achieved on our client's lands by inclusion within the greenbelt study area under Bill 27.

Bill 27 is of substantial concern to our client because, if enacted as presently proposed, it would impose a moratorium on the OMB hearing on at least a portion of our



client's lands that lie south of the Oak Ridges moraine line.

Recognizing the length of time that our client has been pursuing its applications—since 1997—and the abundance of study and work that has been done as part of the OMB process to examine the environmental features on our client's property, it is, in our submission, unfair to halt the hearing of these applications as proposed through sections 4, 5 and 6 of Bill 27.

In our submission, the hearing is not the beginning of a process where you would seek to change the rules but in fact it's the end of a very lengthy process. I adopt the submissions made to you earlier by Mr Alati on behalf of the GTHBA that it is unfair to change the rules while landowners are in progress—and substantially in progress—as my client has been.

With respect to the transition provisions, section 14 of Bill 27 has proposed an amendment to the existing transition provisions under the Oak Ridges moraine legislation. We would seek to have some clarity brought to that section to make it very clear that those changes do not apply to those landowners like my client who have already obtained recognition of transitional status for their lands and their applications under the existing legislation, as it read before December 16, 2003. I have appended for the committee and any policy persons a proposed draft amendment at tab C of the submission book I provided to you. It's both clean and black-lined to indicate where the changes requested are outlined.

By way of a brief background to that request, our client, along with the town of Richmond Hill, and with full notice to all parties to our client's hearings, brought a motion before the OMB last year seeking clarity with respect to the status of our client's applications under the Oak Ridges moraine legislation. Copies of the board's decisions with respect to that are found at tab D of our document book. I don't propose to take you through that. Suffice to say, the board recognized the length of time that our client's applications had been in progress and also recognized that the ORM legislation, as it presently sits, recognizes pre-existing development applications made prior to that act coming into force and effect.

The committee should appreciate, however, that even with the benefit of obtaining transitional status under the ORM legislation, it's not a true grandfathering for my client's applications under that act. Even though they are transitioned, they do not automatically permit our client to develop on the moraine. Our client is still required to meet the very substantive and stringent requirements under the prescribed provisions of that act. In many respects, it is not a true transition or a grandfathering. It still imposes some of the Oak Ridges moraine requirements on our client, and those are the environmental requirements.

We have inquired of the government staff with respect to their intention in proposing the change in section 14 of Bill 27 as to whether it was intended to retroactively alter our client's accrued rights that have been recognized by the board. We've never been advised that that is in fact

the intent. We have communicated to the minister our concern that the wording should be clarified. As I indicated earlier, we've provided some suggested clarity and some wording at tab C that we would ask this committee to consider as part of its consideration of Bill 27.

Finally, I wish to address the committee with respect to a companion zoning order that was enacted by the government in conjunction with Bill 27. It was under regulation 431/03. It is a zoning order that pertains to my client's Oak Ridges moraine lands, along with the moraine lands immediately to the south. That's in distinction to any other moraine lands in Ontario that are similarly designated.

I think it would be helpful for the committee, going back to the aerial photograph at tab B, to recognize again that the minister's zoning order does not seek to achieve to enhance protection for environmental features. Those features are off the moraine and my client's property. We don't understand the intent behind that zoning order which would freeze development on our client's lands for an indefinite period of time.

We've sought clarity from ministry staff and from the minister with respect to the intent. We haven't had any clarity provided with respect to that. Suffice to say, that zoning order is draconian in the extreme. It is discriminatory, in our submission. It affects only a very small portion of the landholdings on the moraine, in distinction to other lands on the moraine that share exactly the same designation. There are no particular environmental features that have been identified by the government in having enacted that zoning order.

In our submission, it is unfair to have that zoning order remain. So we would ask the committee and the government as part of its review of Bill 27 to recognize the discriminatory effect of this zoning order and to revoke the zoning order as my client has requested.

We wish to thank the committee for its time and attention this afternoon. We'd be pleased to deal with any questions you may have relating to my client's particular development applications as they sit in the town of Richmond Hill.

1800

**The Chair:** Thank you. We have approximately eight minutes left. Ms Churley is not here. We can go on to the government side. Who would like to have the question?

**Mr Hudak:** Thank you very much for your presentation and for supplying suggested amendments to section 14 of the bill.

I want to follow up to make sure I understood and the committee understood the section of your presentation with respect to the zoning order. Is this in reference to the minister's general zoning order that he made at the time of the announcement of the legislation or is this a separate zoning order? I had trouble following it.

**Ms Foran:** There were two zoning orders enacted at the same time by the minister, one of which deals with the greenbelt study area. As the committee is likely aware, that zoning order does not deal with moraine



lands and city of Toronto lands, for example, all of which are within that greenbelt study area.

A second zoning order was enacted by the minister. It has been recognized by even its supporters as targeting my client's lands and a portion of Mr Davies's client's lands to the south of 19th Avenue in the town of Richmond Hill. It deals only with those lands on the moraine, in distinction to any other piece of property on the moraine in the province of Ontario. It has frozen development on those lands for an indefinite period of time.

We are not aware, despite our request for clarification as to the intent behind that zoning order, as to the purpose for it. As I indicated earlier, there are no environmental features on our client's moraine lands that are not already being protected through its development applications. No agency or expert has identified any other feature that would require that type of zoning order to be targeted to our client's property. So it's the second zoning order that was enacted at the same time.

**Mr Hudak:** It affected your client's property and that of our previous presenter, Mr Davies's client's property, and that was it?

**Ms Foran:** About two or three landowners just immediately to the south of 19th Avenue, and that is it.

**Mr Hudak:** Was it a political issue? Was there any political pressure on this particular topic? Why would four or five landowners be singled out above all the rest?

**Ms Foran:** The only commonality we share as landowners is that we are all part of the north Leslie secondary plan area before the Ontario Municipal Board. We have varying degrees of commonality with respect to the designation under the Oak Ridges moraine legislation, but we share that with thousands of hectares of land in Ontario.

**Mr Hudak:** To the ministry staff, I understand that there has not been an answer forthcoming to this particular request, so I would like to formally ask staff to brief us in writing as to why the second ministerial zoning order came forward and what was the rationale in treating these people's property separately from the other areas in the greenbelt study area. If we could have that from the ministry as promptly as they have done for my previous requests, it would be greatly appreciated.

**The Chair:** Is it possible to get this before, or for, Friday morning?

**Mr John MacKenzie:** I'm John MacKenzie, from the minister's office. We believe there has been a letter sent, and we will bring it forward if has not been sent. It was in the process of being sent to this group, so we will bring that together.

**Mr Hudak:** So a letter being sent to the landowners will come to the committee members by Friday?

**The Chair:** By Friday we'll have that?

**Mr MacKenzie:** If we have received a request and there is a letter in the system, we will make sure to bring that. Otherwise, we will have to clarify whether or not they have sent a letter.

**Mr Hudak:** Regardless of whether they've corresponded with the ministry, I think the point was brought

forward that there are two separate zoning orders. I try to follow the issue, and I don't know all about the issue, but it's news to me that there's a second special MZO for these particular pieces of property. I would like to know why the minister made that decision. I don't think it's been part of public communications, so I kindly request that you brief the committee in writing why the second order came forward and why it singled out these pieces of property.

**Ms Deborah Matthews (London North Centre):** On a point of order, Mr Chair: Does this relate to this bill we are examining now?

**Mr Hudak:** Of course.

**The Chair:** It does?

**Mr Hudak:** Of course, absolutely.

**The Chair:** To me it does.

**Ms Matthews:** I don't see the link. I can see how it relates to your concerns; how it relates to the legislation is not so clear to me.

**Mr Vic Dhillon (Brampton West-Mississauga):** That's one separate case.

**Mr Hudak:** This property is affected by this legislation.

**Ms Foran:** Oh yes, indeed it is.

**Mr Hudak:** To be clear, and I think the presenter was very clear, this property is affected by this legislation. It was not part of the original MZO; it's part of a second MZO that has not been discussed publicly. I think it's important for us to understand why there's a second MZO on these pieces of property and therefore they're impacted by Bill 27. Why was there a second MZO brought forward?

**Mr Dhillon:** But if the case is in front of the OMB, that's for them to—

**Mr Hudak:** I don't think it has anything to do with the OMB.

**Mr Dhillon:** Absolutely, it does.

**Mr Hudak:** There are two MZOs that were done at the same time as the minister released Bill 27. Why was the second MZO brought forward? It's a simple question. I don't know why there is a hesitancy to find out the answer.

**The Chair:** Mrs Van Bommel is the PA.

**Mrs Van Bommel:** I would like to ask our legal adviser to come forward and speak to that whole issue of the second MZO and its relevance to this legislation.

**Mr Irvin Shachter:** Good afternoon, Mr Chairman. My name is Irvin Shachter.

The second minister's zoning order is not part of Bill 27. While I understand there's been a question with respect to the rationale behind it, I'm not quite sure it's specifically within the parameters of this committee's consideration. That's the comment I have in that respect.

**Mr Hudak:** I appreciate your advice on what the parameters of the committee are and what we're interested in. I'm certainly interested in it, and I hope other colleagues of mine are as well. Our deputant today definitely spoke about this particular MZO and its relationship to Bill 27. I think it's incumbent upon us to

explore that and find out the reasons behind the minister's decision. There may be some disagreement between what you're saying as legal adviser and what the deputants are saying. With all due respect, I think I'd like to hear from both sides.

**Mr Shachter:** Mr Chairman, I'm in your hands in that respect. Should you direct that, we certainly can try and comply, as Mr MacKenzie has already indicated to you. Again, I'm not quite sure how the concern that's been raised relates specifically to Bill 27, which is currently before you. I guess that's the concern I have before this committee.

**Mr Hudak:** Simply because it was brought up by a deputant who seems to have a contrary point of view to you as legal adviser.

**Mr Shachter:** I appreciate that, sir, and I don't wish to argue with the concern that was raised, but I would suggest that simply because a matter has been brought up, that doesn't automatically make it a matter that is necessarily within the purview of this committee.

**The Chair:** Can you provide us with what you can on that request?

**Mr Shachter:** Yes, I'll see what I can do.

**The Chair:** Thank you.

**Mr Shachter:** You're very welcome.

**The Chair:** That is the time that has been allotted to us, and that is the end of the public hearing for today. The committee is adjourned until 10 am on Friday, May 21, in Aurora. Thank you again.

*The committee adjourned at 1809.*





## **STANDING COMMITTEE ON GENERAL GOVERNMENT**

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### **Vice-Chair / Vice-Président**

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Mr Wayne Arthurs (Pickering-Ajax-Uxbridge L)

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### **Substitutions / Membres remplaçants**

Mr Tim Hudak (Erie-Lincoln PC)

Mrs Maria Van Bommel, Lambton-Kent-Middlesex L)

### **Also taking part / Autres participants et participantes**

Mr John MacKenzie, planning policy, Ministry of Municipal Affairs and Housing

Mr Irvin Shachter, counsel, Ministry of Municipal Affairs and Housing

### **Clerk / Greffière**

Ms Tonia Grannum

### **Staff /Personnel**

Mr Jerry Richmond, research officer,  
Research and Information Services



## CONTENTS

Monday 17 May 2004

<b>Greenbelt Protection Act, 2004, Bill 27, <i>Mr Gerretsen</i> / <b>Loi de 2004 sur la protection de la ceinture de verdure</b>, projet de loi 27, <i>M. Gerretsen</i>.....</b>	<b>G-315</b>
Earthroots.....	G-316
Mr Josh Matlow	
Davies Howe Partners .....	G-318
Mr Jeff Davies	
Urban Development Institute of Ontario .....	G-321
Mr Neil Rodgers	
Mr Mark Tutton	
Ontario Federation of Agriculture .....	G-324
Mr Ron Bonnett	
Greater Toronto Home Builders' Association .....	G-328
Mr John Alati	
Mr Mark Parsons	
Mr Jim Murphy	
Ontario Professional Planners Institute .....	G-331
Mr Donald May	
Ms Melanie Hare	
Aird and Berlis LLP .....	G-334
Ms Patricia Foran	



G-14

G-14

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# Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

# Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

## Official Report of Debates (Hansard)

Friday 21 May 2004

## Journal des débats (Hansard)

Vendredi 21 mai 2004

### Standing committee on general government

Greenbelt Protection Act, 2004

### Comité permanent des affaires gouvernementales

Loi de 2004 sur la protection  
de la ceinture de verdure



Chair: Jean-Marc Lalonde  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Friday 21 May 2004

Vendredi 21 mai 2004

*The committee met at 1003 in the Howard Johnson Hotel, Aurora.*

## SUBCOMMITTEE REPORT

**The Vice-Chair (Mr Vic Dhillon):** Good morning everyone. Welcome to the standing committee on general government. We're here in Aurora to look at Bill 27, An Act to establish a greenbelt study area and to amend the Oak Ridges Moraine Conservation Act, 2001.

The first item on the agenda is the report of the subcommittee. Can I get somebody to move the report?

**Mr Bob Delaney (Mississauga West):** I move the adoption of the report of the subcommittee. The report of the subcommittee reads as follows:

Your subcommittee met on Tuesday, May 18, 2004, to consider the method of proceeding on Bill 27, An Act to establish a greenbelt study area and to amend the Oak Ridges Moraine Conservation Act, 2001, and recommends the following:

(1) That the clerk provide each caucus with the list of those who have responded to the advertisement and wish to appear in Aurora and Toronto on May 21 and May 31, 2004, respectively by 5:30 pm on Wednesday, May 19, 2004.

(2) That each caucus then provide the clerk with a prioritized list of five witnesses and two alternates to be scheduled for Aurora.

(3) That the official opposition caucus and third-party caucus provide the clerk with a prioritized list of two witnesses and two alternates, and the government caucus provide the clerk with a prioritized list of three witnesses and two alternates to be scheduled for Toronto.

(4) That all caucus witness lists be provided to the clerk by no later than 10 am on Thursday, May 20, 2004.

(5) That the clerk of the committee, in consultation with the Chair, be authorized prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

This is the report of the subcommittee.

**The Vice-Chair:** All in favour? Carried.

## GREENBELT PROTECTION ACT, 2004

LOI DE 2004 SUR LA PROTECTION  
DE LA CEINTURE DE VERDURE

Consideration of Bill 27, An Act to establish a greenbelt study area and to amend the Oak Ridges Moraine Conservation Act, 2001 / Projet de loi 27, Loi établissant une zone d'étude de la ceinture de verdure et modifiant la Loi de 2001 sur la conservation de la moraine d'Oak Ridges.

## TOWNSHIP OF BROCK

**The Vice-Chair:** The first presenters we have are Keith Shier, mayor of the township of Brock, and Thomas Gettinby, deputy clerk, administration. Welcome and good morning. You have 20 minutes. Any time remaining will be divided up among the three parties. You may begin.

**Mr Keith Shier:** Thank you, Mr Chairman. We'll be fairly quick. My name, as you know, is Keith Shier, and I'm mayor of Brock township. With me I have assistant clerk administrator and former planner, Mr Gettinby. We are pleased to be here this morning to present to you on behalf of our council, and we would like to provide our comments on Bill 27 and the impact that it has on our municipality.

Brock is a rural municipality with a population of 12,000 persons located in the northeast corner of the greater Toronto area on the east side of Lake Simcoe. Most of our residents live in three urban centres: Beaverton, Cannington and Sunderland. We are the most northerly municipality in the greater Toronto area and in the region of Durham.

We are proud of our ability to manage growth in our township, and for the past 30 years have followed development principles that have been established by the province and set forth in the official plans for the region of Durham and the township of Brock.

Brock agrees that urban sprawl and the loss of productive agricultural land surrounding Toronto is a serious issue and is worthy of the government's attention. I myself am a farmer, so I understand what good agricultural land is and how valuable it is to our province and our country.

Most land in the township is designated for agricultural purposes and, since agriculture is our largest employer,



its continuance is important to our economy. However, there are areas in our township, particularly north and east of Beaverton, which do not contain productive agricultural land. Development pressures within the township are not similar to those within municipalities south and west of us. In fact, we only issued 23 building permits for houses last year.

Even though agriculture is important as an employer in our township, we do need other access to employment for our young people, who have to move or travel out of our township for employment. It's very important that we seek other avenues of employment within our township.

I'll let Mr Gettinby explain where we are and what we are doing in that venue.

1010

**Mr Thomas Gettinby:** The regulation in Bill 27 has a direct impact on four development applications on lands outside of our urban areas. The first one is an 18-hole golf course south of Beaverton proposed by Kaneff Properties. This application has been approved by the region of Durham. All that is left is for us to execute a site plan agreement and pass the implementing zoning bylaw. Second, we had a major expansion to an existing gravel pit, which was approved by the Ontario Municipal Board on December 15, 2003. In addition to agriculture, a lot of our residents are employed through the gravel industry, either at the pits or as haulers. The third application is a 48,000-square-foot grocery store proposed by Loblaws, which is located in an existing zoned-commercial node on Highway 12, just east of Beaverton. Last, we have a Tim Hortons/Wendy's restaurant that is proposed, again east of Beaverton on Highway 12.

Needless to say, these developments are important to the township of Brock, particularly since we do not experience the same type of development pressures as other municipalities within the greater Toronto area, nor as those other municipalities impacted by Bill 27.

Council believes that the zoning order in Bill 27, in its present form, will cause a loss of investment, a loss of taxation revenue and a loss of employment opportunities for our residents. We do not think this is what the government intended. Council also believes that the zoning order in Bill 27, as it affects the development previously approved by council, either locally or regionally, seriously undermines the role of council in assessing planning applications. This appears to be contrary to the government's mandate to respect local decision-making authority.

Therefore, in conclusion, the township of Brock respectfully requests that the committee consider the following exemptions prior to third reading: first of all, that the township of Brock be exempted in its entirety from the provisions of Bill 27 and that the zoning order be lifted as it affects Brock; second, if a full exemption is not granted to the municipality, we would request that exemptions be incorporated into the bill that would allow for the processing of existing applications that are locally supported and far advanced in the planning process; and, third, we would request that exemptions be permitted in

areas that are already designated and/or zoned for urban uses within our rural areas.

**Mr Shier:** The reason we ask for a total exemption is that we believe we are far removed from the area you have most concern with. We are only in the greater Toronto area by virtue of being a member of Durham region. We are a 20- to 25-minute drive north of the Oak Ridges moraine and we feel we are far removed from that area which is of most concern to you. Having said that, we do believe in green areas and we do believe in good management of development, and we will continue to work toward that.

We look forward to your questions. Thank you very much.

**The Vice-Chair:** There are 12 minutes remaining. That means four minutes for each side, and we'll start off with the opposition.

**Mr Frank Klees (Oak Ridges):** Your Worship, thank you very much for your presentation. I think the central issue you make is that this bill is an absolute contradiction to a previous bill that was passed, or that's introduced, that's being considered by this government, and that relates to the whole issue of decision-making.

We heard much from this government, or certainly from the Liberal Party, during the election campaign and leading up to this last election about how important it is to respect local decision-making. You've made the point in your presentation here that this really is contrary to the government's mandate to respect local decision-making. I'd be interested in your thoughts as to the reaction of your council, what the reaction at the local level is, not only in your case but in the region as well, to this contradiction. On the one hand, you have a Minister of Municipal Affairs saying, "We want to respect local decision-making," yet there are now years of planning that you've made at the local level, there are applications in process, and this puts a halt to all of that and effectively threatens to overturn that. I'd be interested in your comments.

**Mr Shier:** Actually, we don't have many rear-view mirrors in Brock township. We're sort of looking to go ahead. What is done is done. We think there are ways and means that we can work through this, and we can work with the good parts of the legislation. We hope that members will iron out some of the wrinkles in what is presented to us. Certainly, it doesn't work for everybody. One size does not fit all. We are hopeful that we can work through this and take our township forward as quickly as possible.

If there is a great delay, and I certainly hope there won't be, there will be a leapfrogging effect, and we're beginning to see some of that effect right now. The grocery store that Mr Gettinby spoke about will not wait long and they can, by moving just a few miles north, move to an area where they will not be caught in Bill 27 and the zoning order. They don't want to do that. They want to be in the area that they have spoken to us about and that is where they have done their marketing work. They want to be there, but in today's business world you cannot sit long or your opposition will surpass you and

you'll be left behind. We don't want that to happen in Brock township.

**Mr Klees:** That leapfrogging effect is something that we're hearing right across the province from many jurisdictions, from many areas. This is effectively creating an artificial boundary, isn't it, that's restricting development? Then, beyond that, it's actually having a very interesting effect on land values as well, because this is really a market-drive issue, isn't it?

**Mr Shier:** I think that's a fair assessment.

**Ms Marilyn Churley (Toronto-Danforth):** Thank you very much for your presentation. To start with, there are some who believe that Simcoe county in general should be included under the greenbelt legislation. What do you think of that?

**Mr Shier:** I really have no opinion on Simcoe county at all. I'm just worried about the north part of Durham region. I suppose if—

**Ms Churley:** If I may, I know it's out of your area, but just in terms of leapfrogging development, you mentioned that there is great concern about that.

**Mr Shier:** I suppose if Simcoe county were included, there would have to be other areas included as well. It would be very far-reaching, to be fair to everyone and to create a level playing field for everyone.

1020

**Ms Churley:** The developments that you have mentioned here—the 18-hole golf course, the existing gravel pit expansion, the grocery store—what is on that land now? Is it agricultural land?

**Mr Gettinby:** Actually, what's on it right now is an old motel that was developed in the mid-1960s. Just to the south, there is a McDonald's restaurant that opened approximately three years ago. Immediately to the north is a Subway Restaurant and a local businessman who sells Honda motorcycles, ATVs and things like that. The property itself is zoned for highway commercial purposes. It just doesn't specifically permit a grocery store, and therefore requires a rezoning; it therefore is caught.

The gravel pit expansion that's mentioned in the report is an existing gravel pit. It's been there probably for about 40 years or more. They expanded the boundaries, perhaps by including a further 100 to 200 acres. This application was approved, both at the township and regional level. It was appealed to the Ontario Municipal Board. There was a successful mediation on December 8. The board issued its decision, I believe, one day before Bill 27 was introduced.

**Ms Churley:** What about the golf course?

**Mr Gettinby:** The golf course is just south of Beaverton. It's basically sitting on vacant land. Again, with that application there were environmental studies submitted. They have been peer-reviewed. There was an official plan amendment that was adopted by regional council. Up until Bill 27, we were working with the applicant to finalize the details of the site plan agreement.

Obviously, one of the major players is the Lake Simcoe Region Conservation Authority. At this point,

they are waiting to see what happens with Bill 27 before they spend any more money dealing with the site plan.

**The Vice-Chair:** Thank you very much.

**Mrs Maria Van Bommel (Lambton-Kent-Middlesex):** Thank you very much. I'm sure you're aware that Bill 27 is a time-out bill. All we're doing is trying to get an opportunity to have a look at the potential study area for the greenbelt.

You're talking about the Loblaws development, the grocery store development, and the possibility that they will leave. Now, you also mentioned that they've invested a lot in marketing and the development process so far. Do you think that they won't wait until the end of this year before they move on? You talk about the leapfrogging, but we've got a lot invested here already. Why would they go when they know that this bill is finished basically at the end of this year?

**Mr Shier:** The problem is, if they don't go with the store, another company can put one in just north of them, and then there's no sense in their putting in a store at all, because the market would be split. It's close enough. The area's within about four or five miles of the boundary. So they just have to move past the boundary in the Brechin area, and another company could steal the market. Then it's gone and the opportunity is lost.

I look at it as being a little too late, if we have to wait until the end of this year. By that time, we're into winter. Nothing happens until spring. We're looking at another year. That's actually too long.

**Mrs Van Bommel:** Thank you.

**Mr Tony C. Wong (Markham):** I want to maybe understand this a bit more. You've indicated that there were 18 building permits for last year. Was that an average year? Was that a good or bad year?

**Mr Shier:** Actually, 23. I think it was a pretty average year; maybe a little better than some and certainly lower than others, but pretty average.

**Mr Wong:** With respect to the golf course, what was the approval date by the region of Durham?

**Mr Shier:** We're guessing a little bit—2001, maybe.

**The Vice-Chair:** Thank you very much, Mayor, for your presentation.

#### AGGREGATE PRODUCERS' ASSOCIATION OF ONTARIO

**The Vice-Chair:** The next presenter is Carol Hochu. She's the president of the Aggregate Producers' Association of Ontario. Did I pronounce your name right?

**Ms Carol Hochu:** You did, indeed. Congratulations.

**The Chair:** You may begin. You have 20 minutes. Any time remaining will be shared among the three parties.

**Ms Hochu:** Thank you, Mr Chairman, and good morning to the members of the standing committee. My name is Carol Hochu and I'm president of the Aggregate Producers' Association of Ontario. Joining me today is Peter White. He is APAO's environment and resources manager and he'll help me answer any questions you



might have. We appreciate the opportunity to be before you today.

Last February, I had the pleasure of being appointed by the Honourable John Gerretsen, Minister of Municipal Affairs and Housing, to the Greenbelt Task Force. Comprising a wide variety and diverse number of groups, the task force has provided the minister with what we hope is invaluable advice on how to achieve the dual objectives of promoting environmental protection while ensuring Ontario's continued prosperity.

By way of background, the Aggregate Producers' Association of Ontario, or APAO for short, is the provincial industry association representing over 200 member companies. Nearly half are aggregate producers with pits and quarries, while the remaining member companies supply equipment, consulting services and other important products and services to the industry. Our mission is to build partnerships with the government and the public to promote the wise management of aggregate resources.

Just a brief definition: According to the Aggregate Resources Act, "aggregate" is a term that describes a number of products including gravel, sand, clay, stone etc. The laundry list is in your presentation.

Our members represent the majority of the 165 million metric tonnes of aggregate consumed in the province every year—a key component of Ontario's \$30-billion construction industry. Our industry employs over 41,000 workers, both directly and indirectly, in services such as transportation and equipment. Hundreds of thousands of jobs in the construction industry also rely on an adequate supply of quality aggregate products.

In Ontario, aggregates are used in greater volume than any other mineral resource. This is a direct indicator of the strength of Ontario's economic growth and is intricately linked to construction spending and sustained growth. However, it's becoming increasingly clear that a crisis in high-quality aggregate supply is upon us in and around the Golden Horseshoe. Statistics indicate that depletion of available reserves in the GTA over the past 12 years is three times greater than replacement. Scarcity is a powerful force. You might be interested to know that it takes on average six to 10 years and hundreds of thousands, if not millions, of dollars to bring new licenses on stream due to an increase in the requirements for technical studies, along with public and agency review and comment.

There is indeed an urgent need for new private sector investment to secure supply. Unless there is encouragement for new private sector investment and clear policies to protect and make aggregate available by governments, there could be severe consequences to public and private infrastructure projects and construction. In fact, you may be surprised to learn that the public sector is the largest user of aggregates in the province. Construction of hospitals, schools, community centres, civic buildings, provincial highways and municipal roads, among others, all depend on a supply of aggregates close to market.

Bill 27 provides an opportunity for the province to put in place a series of measures that will ensure a steady

stream of aggregates close to market that is entirely consistent with the goals and objectives of environmental protection.

I would ask the committee to consider the potential impact of restricting the available supply of aggregates, both in economic and environmental terms. Consider for a moment the additional transportation costs associated with bringing aggregates to the GTA because applications have been frozen in the GTA, Hamilton and Niagara areas. Transportation costs alone—and transportation does comprise more than half the cost of aggregates—associated with importing more aggregates to replace amounts produced in the GTA today would be about \$4 billion over a 10-year period.

#### 1030

The hauling of aggregates from more distant parts of the province will also have a detrimental impact on the environment, leading to additional fuel consumption and greenhouse emissions. I've provided a statistic that the impact of hauling 34 million metric tonnes of additional imports per year an additional distance of 75 kilometres translates into additional fuel consumption of 82 million litres per year and additional greenhouse gas emissions of 225,000 metric tonnes per year. It is therefore vitally important that we plan for the responsible use and production of aggregates within the proposed greenbelt area.

Bill 27 inappropriately treats aggregate extraction as a matter of urban sprawl, when mineral aggregate is clearly an interim rural resource use and recognized as such in the provincial policy statement. We feel that this error must be rectified before final reading of the bill.

Therefore, we propose three changes for your consideration. Page 1, paragraph 4 of the preamble speaks to "food, water, natural heritage systems, green space and recreation" in the Golden Horseshoe area. We believe that the Golden Horseshoe area is also an important source of mineral aggregate resources. Thanks to Mother Nature this area contains aggregate, and therefore we think it should be added to the list of greenbelt resources.

Page 2, section 1, under definitions: The "urban uses" definition is vague and needs to be clarified so that aggregate extraction is not included as an urban use. We certainly don't believe that aggregate extraction is an urban use, but it could be construed that way under the "urban uses" definition. We recommend that the "urban uses" definition be clarified by changing the phrase "non-agricultural" to "non-resource-based" throughout.

Finally, page 5, clause 8(2)(b), regulations by the minister: The prohibition on "site alteration, the cutting or removal of trees or the grading of land in the greenbelt study area" should be clarified so that it applies only to urban uses.

We believe that these proposed changes to the bill are very much in the public interest in terms of economic and environmental sustainability and are also consistent with, and supportive of, the provincial policy statement.

Let me conclude with some key messages. Aggregate extraction is vitally important to Ontario's economic prosperity and does not compromise environmental or



greenbelt objectives. Aggregate extraction is an interim land use. Once completed, the land is returned to important uses consistent with greenbelt goals and objectives. Anyone who has been to the Royal Botanical Gardens, traveled through the forks of the Credit River or played an occasional game of golf in Caledon has seen first-hand how aggregate sites are returned to compatible land uses once extraction is complete.

Our industry has worked co-operatively with all levels of government for many years on how best to return these sites to environmental, recreational, agricultural and other uses. It is indeed possible to end up with a net environmental gain through creative and science-based rehabilitation plans. And we believe we have succeeded on many fronts.

An adequate supply of aggregate close to market has positive economic, environmental and social benefits, and is essential if the government is to meet its dual objectives of addressing the infrastructure deficit while protecting the environment.

I have attached to my presentation two maps showing the location of aggregate resources in the Golden Horseshoe area as well as some wonderful examples of rehabilitation to a wide variety of after-uses.

On behalf of the Aggregate Producers' Association of Ontario, thank you for your time and attention today. Peter and I would be pleased to answer any questions you may have.

**The Vice-Chair:** Thank you for your presentation. We have about four minutes for each party, and we can start with the third party.

**Ms Churley:** Thank you for your presentation. As you know, there's a whole other point of view on this, and I'm going to raise it. In the Environmental Commissioner's report of 2002-03—I don't know if you had a chance to look at it—he indeed expressed very serious issues around aggregate extraction as a major environmental concern. He talked about the fact that when the extraction sites were no longer in operation, even after decades of extraction, with the injection of capital they can become, as you said, rehabilitated and restored to productive land use. That's why it's called interim land use. But what was pointed out was that the land is being degraded faster than it's being rehabilitated by aggregate licensees. Between 1992 and 2000, 5,500 hectares of degraded land had accumulated due to aggregate extraction. He goes on about how it is a very serious problem and one we have to take note of. I'm just wondering what your comments would be on that. Do you agree with the Environmental Commissioner?

**Mr Peter White:** We agree that the Environmental Commissioner has identified those concerns.

**The Vice-Chair:** May I get your name, just for the record?

**Mr White:** I'm sorry, my name is Peter White. The Environmental Commissioner, in pointing this out, has identified that the rate of rehabilitation is not satisfactory as far as he is concerned. Part of the issue there is

actually how you count disturbed acres. One of the biggest—

**Ms Churley:** Sorry, how you count—?

**Mr White:** How you count what we call the area that's been disturbed, that's been extracted.

**Ms Churley:** I see, disturbed area. I just didn't hear you.

**Mr White:** Part of the controversy there is that we have several locations where you have large bodies of water created as part of the operation. Those areas of water are considered to be disturbed acres. The actual rehabilitation plan calls for that area to be a lake. You don't get credit for that lake until you're actually finished, even though the rehabilitation that you would actually do is for the periphery of the lake—ie, the shoreline. But the way that the calculations are required under the regulations at the moment, even though the lake is there and created in maybe year five of your operation, you don't get credit for that number until you've reached the end. So there is some tightness within the regulations as they exist that could cause us some difficulty in reporting.

We are not dismissing that it is an ongoing problem related to how quickly rehabilitation can be done. We're required by regulation to continuously do progressive rehabilitation, and companies are working very diligently toward that.

**Ms Churley:** OK, I hear you. Thank you very much for your answer. It is a growing concern as we deplete this resource and take up land. In fact, there are also concerns that as it continues to grow, it threatens UNESCO biosphere areas.

This is not your job, but it's my view that the province should do more on conserving aggregate by using more recycled materials in road construction and other areas when possible. You make a good point, that we're running out. Of course, I know you're representing an industry. This is what you do, and I don't expect you to necessarily agree with me on this, but I believe and I think many share this belief, as well as the Environmental Commissioner, that this is huge and becoming an even bigger problem. Has your industry looked at the reality of that and started to look at other ways of doing things?

**The Vice-Chair:** Just a quick reply, because your time is up and we'll have to move on.

**Ms Hochu:** Just on the issue of substitution for aggregates or recycling, you should know that the recycling of asphalt and concrete, which largely contains aggregate, is very high. Any producer that has the ability to accept asphalt and concrete and recycle it will do so. With respect to substitute materials, there really aren't any good ones. Plastic and steel in some instances, if the price is competitive, can be used in some structural applications. Furthermore, specifications set by MTO and other agencies require high-quality aggregates for their strength and so on. The industry is looking at this issue of substitution and recycling but it's not likely to replace a large amount of aggregate any time soon.



1040

**Mr Delaney:** I'd like to thank you for a very interesting and helpful presentation and, in particular, the maps that you've provided to clarify it.

I have a number of questions, more in the range of clarification. I'll try and get down the list. I have about six of them; let's see how far we can get. What is the expected lifespan in years of your average aggregate pit or quarry?

**Ms Hochu:** I guess the answer is it depends. It ranges widely. There have been examples of small sites that have been extracted and rehabbed in five, eight and under 10 years, and there are some pits and quarries that have been in operation for 50 years.

**Mr Delaney:** Including environmental impact studies and the time required to remove any overlying vegetation or overburden, what would you estimate is the average length of time to bring a new aggregate pit or quarry into production?

**Ms Hochu:** I think we referenced that in our presentation. On average, our members report six to 10 years to bring a new site on stream, and hundreds of thousands, if not millions, of dollars due to all the technical requirements.

**Mr Delaney:** Do you think you could submit to the committee an indication of at what stage in their expected lifetime the pits that you show on your maps are, and also add a list of aggregate pits and quarries outside the Bill 27 study area?

**Ms Hochu:** Sorry, the first part of the question again, sir?

**Mr Delaney:** In the facilities that you show that are inside the Bill 27 study area, could you at some point in the future send us on paper an indication of at what stage in their expected lifetime these facilities are?

**Ms Hochu:** I guess we can do our best to assemble that information for you.

**Mr Delaney:** Can you describe the process of de-commission and remediation of an aggregate quarry; for example, an estimate of the time required to return a quarry to its natural state, and just a quick overview of what processes are required?

**Mr White:** Quarries are a little more difficult than pits because you're removing material by blasting and you're essentially going into a vertical operation. The material that you're removing you then process. If the area becomes like the Milton limestone site, where the slopes were rehabilitated, cliff swallows were introduced, trees were planted, a marshland was established and then a large lake and recreation area was established and eventually the conservation authority headquarters are going to be established there—that site, by example, on top of the Kelso Conservation Area, has taken 11 years of work since they stopped to make it into the idyllic site that it is.

The requirements to rehabilitate are legislated and are ongoing, so that, depending on how much you have done and what the prescribed end use is under the Planning Act to fit in, the time frame does go on.

**Mrs Julia Munro (York North):** Thank you very much for being here today to give us this insight. I guess one of the things that strikes me about this is the reference in your presentation on page 3 that the depletion of available reserves in the GTA over the past 12 years is three times greater than the replacement, particularly when you talk about the fact that the public sector is one of the largest users.

From an industry point of view, if we were to just step away from the current legislative moratorium that we're looking at, could you comment on what you see in terms of the future, even without the changes that you suggested in your presentation? Are we looking at a future where we're going to be paying significantly more for aggregate? Are we looking at a future where the costs of transportation and the ancillary and consequent costs in terms of environmental issues are also going to escalate? I just wondered if you could give us a sense of how you see the future unfolding.

**Ms Hochu:** The short answer is yes to all those three points that you made.

**Mrs Munro:** Then I guess my question is, obviously, looking at the current Bill 27, this simply places a greater pressure on that already existing in this aggregate industry. Is that a fair assessment?

**Ms Hochu:** Yes.

**Mrs Munro:** Do you think the questions you have raised in terms of the suggestions you've made with regard to the bill—in the definitions, the preamble and so forth—will help to ensure a supply? Will it help to ensure a stable environment for what is a huge use in the province?

**Ms Hochu:** Yes. Changing the definitions will remove the zoning order and the moratorium from aggregate and will relieve applications that are frozen. I think our suggested changes will do all that to improve the situation.

**Mr Klees:** Thank you for your presentation. I think what you've done is helped to position the importance of keeping a balance here in terms of the realities of the GTA and the need for aggregate. The fact is that it is a growth area, and aggregate is extremely important, particularly to ensure the sustainability of the kind of commitments that even this government is making with regard to transportation, highways and other aspects.

I think it's extremely important for this committee to understand the degree of commitment that the industry has to rehabilitation. If members of the committee have not already done so, I think it would be very helpful for them to have a tour of some of the rehabilitated areas. I know even within our own region here, there are some amazing places that, when you go there, you have no concept that they were ever a pit or an aggregate operation. There are areas in this region that are beautiful horse farms or recreational facilities. I think it's important for the public to understand as well the responsibility of this industry in terms of committing to the rehabilitation and that it is in fact an interim industry.

Certainly, I will be supporting your request for the changes of definition that you've requested here. I think



it just makes good common sense and it really is in the public interest. I appreciate your coming forward with those very specific recommendations.

**Ms Hochu:** Could I make one comment, Mr Chair?

**The Vice-Chair:** Just quickly. We're running—

**Ms Hochu:** It just reminds me that an invite has been extended to all members to attend a tour of active and rehabilitative properties on the Oak Ridges moraine for June 4. So if you could join us, that would be wonderful.

**The Vice-Chair:** Thank you for your comments.

#### ENVIRONMENTAL DEFENCE CANADA/ ONTARIO GREENBELT ALLIANCE

**The Vice-Chair:** The next speaker is Rick Smith from Environmental Defence Canada/Ontario Greenbelt Alliance. Good morning, Mr Smith. Could I get the name of the person beside you?

**Mr Rick Smith:** This is Mr David Donnelly. He's the legal director at Environmental Defence.

**The Vice-Chair:** You have 20 minutes. You may begin.

**Mr Smith:** Good morning, everyone. My name is Rick Smith. I'm executive director of Environmental Defence Canada. We're an environmental charity based in Toronto, and as I mentioned, I'm accompanied this morning by Mr David Donnelly, who is legal director at Environmental Defence. I'd like to thank you for giving us the opportunity to speak on this important issue this morning.

I'd also like to welcome you to my old high school stomping grounds. Just down Yonge Street in Oak Ridges is Lake Wilcox, where I have to say I lifeguarded for many summers. As you know, Lake Wilcox is the largest of the moraine's wonderful and unusual kettle lakes. Whatever conservation measures we discuss here today, unfortunately, will come too late for Lake Wilcox. It's been so polluted by the ill-planned development that now rings it that when we were lifeguarding, the joke was that we weren't actually protecting swimmers from drowning, we were protecting them from being eaten by the huge, green globs of polluted slime on the lake. I regret to tell you that Lake Wilcox now relies on a permanent mechanical lake lung that pumps oxygen into the lake bottom 24 hours a day. Hopefully, your deliberations here today will ensure that similar stories of lost natural heritage will become a thing of the past.

1050

It's our pleasure to be presenting today on behalf of the Ontario Greenbelt Alliance. The Ontario Greenbelt Alliance includes over 50 organizations united in the common vision for a well-protected greenbelt. The alliance membership ranges from associations of health professionals, such as the Ontario College of Family Physicians and the Registered Nurses Association of Ontario, to local community groups, such as the Friends of the Rouge Watershed. Also, the alliance includes provincial environmental organizations, such as the Sierra Club, the Canadian Environmental Law Associ-

ation etc. I think it's a measure of the level of interest in seeing this greenbelt initiative succeed and the multitude of different benefits the greenbelt would bring Ontario that you see such a large and diverse number of groups coming together in such a relatively short period of time. Environmental Defence is the coordinating organization for the alliance.

We would like to congratulate the present government for moving quickly on its election commitment to establish a greenbelt that protects at least 600,000 acres, in addition to land already protected on the Niagara Escarpment and the Oak Ridges moraine.

The alliance believes that the Greenbelt Protection Act has the potential to be an historic first step in creating something truly extraordinary for this and future generations, and that is a robust and continentally significant greenbelt. Such a greenbelt, if done right, would improve Ontarians' quality of life, conserve prime farmland, protect watersheds and water sources, and restore and connect forests and natural areas to allow wild species to find recovering habitats beyond the isolated fragments in which they are now confined.

That is if the greenbelt is done right. Done poorly, this greenbelt has the potential to contribute to leapfrog development, a concept that is so well understood, it actually has a name. Why would we repeat the problem that we know can occur with leapfrog development? Done poorly, this greenbelt could be carved up by roads and eaten away over time. It could be as stillborn and unsuccessful an initiative as the ill-fated parkway belt—a chunk of land that was supposed to be a greenbelt and regrettably is now known as the 407. They say the definition of insanity is repeating the same thing twice and expecting a different outcome the second time around. We certainly don't want to repeat the parkway belt experience, and we have some commonsense amendments to propose to you today to help the committee make sure that this greenbelt is done right.

The Ontario Greenbelt Alliance members believe that in order to be successful, the greenbelt must be planned according to the following principles:

(1) We should think big and not small. The greenbelt must link the Niagara Escarpment, the Oak Ridges moraine and the Algonquin Park-Adirondack state park axis as a unified natural heritage system. This protection plan has been discussed for years by scientists. It has come to be known as NOAH. Connecting these four existing protected areas will form the greenbelt's backbone and support steps to reverse the fragmentation of natural areas, the loss of biodiversity and the degradation of watersheds. The last thing Ontario needs is another isolated island of green.

The good news is that Ontario doesn't have to reinvent the wheel when it comes to planning these sorts of ambitious corridors of protected habitats. It's being done in the Pacific northwest, called the Yellowstone to Yukon Conservation Initiative. It's being done in Florida, called the Panther Parkway. There are initiatives ongoing in Ontario that it would be a shame if this greenbelt didn't



connect with. We have hard-working groups connecting with the MNR in eastern Ontario, trying to protect the corridor of habitat between Algonquin Park and Adirondack Park. We have folks up in the Georgian Bay area coming forward with a great proposal for the Great Lakes heritage coast. We have folks down in Carolinian Canada proposing a protected system of Carolinian habitat. The greenbelt is an opportunity to fill in the middle and connect these different efforts.

(2) Some threatened areas need immediate protection. There's one called north Leslie, just down the road. You have heard already, and you will hear from some other developers following us, who want to develop north Leslie. It's one of the most threatened areas in Ontario. Quite frankly, there are some threatened areas in Ontario that need protection now, or else they're not going to be around a year from now when the greenbelt finally materializes. We have identified what we think are the top 10 most threatened of these areas, and we have appended those to our brief today.

(3) Infrastructure is another form of development that must be properly planned. The core areas of the greenbelt, representing the richest and often most threatened environmental functions and features, must be protected from further infrastructure construction and incompatible land uses.

(4) The creation of the greenbelt is not just about protecting land, it's about safeguarding our quality of life. The greenbelt must be large enough to contain urban sprawl, reduce air pollution, enhance water source protection and biodiversity and improve our quality of life. My colleague will be speaking about that in a few minutes.

Consistent with these principles, the alliance believes that Bill 27, in order to be effective, should be amended in the following five specific ways:

(1) A purpose clause should be added, stating explicitly that the greenbelt is intended to become part of a larger, connected network of protected areas across the province.

(2) The description of the greenbelt study area in schedule 1 needs amending. The greenbelt study area is frankly too small and, as currently constituted, is guaranteed to lead to leapfrog development. We've seen the articles in the Toronto Star about massive developments occurring in south Simcoe around the Kitchener-Waterloo area. It will occur.

Given the obvious link between Smart Growth planning and the creation of this greenbelt, we would suggest that it's logical to make the central Ontario Smart Growth zone congruent with the greenbelt study area.

(3) A clause should be added to the bill placing planning and approvals for all new highways and major infrastructure in abeyance.

(4) Section 14 of Bill 27 needs amending. In addition to the welcome clarification this clause currently provides regarding the qualification for transition provisions under section 17 of the Oak Ridges Moraine Conser-

vation Act, section 14 should be amended to also apply to permits for major infrastructure development.

(5) Schedule 2 of Bill 27 needs amending. We're not sure if it was an oversight or not, but the reference to the Niagara Escarpment planning area should be removed from this schedule. As currently constituted, the bill actually gives a lesser standard of protection to the escarpment, which is a perverse outcome that needs to be rectified.

Once amended as described above, the alliance feels strongly that Bill 27 should be passed by the Legislature as soon as possible before the summer recess. It's not often that you hear charities urging the government to move quickly in this manner. We're doing so because, quite frankly, the need is urgent, as the government has already correctly identified.

I'd like to pass to my colleague to conclude our remarks.

**Mr David Donnelly:** My name again is David Donnelly, legal director. I have represented numerous groups, including Save the Rouge Valley System, at land use planning tribunals at the OMB over a number of years, and had the pleasure and the pain of representing Save the Rouge Valley System at the infamous Richmond Hill hearing into the pinch point, where the development has gone into 5,700 houses.

Through that experience, I have been able to determine in my own mind that the most important date for the environment in Ontario's history, past or future, is December 16, 2004.

The greenbelt can solve many of our province's most pressing problems: traffic congestion, protection of agricultural land and farming, air quality, safe drinking water and endangered species. Many, many other social benefits can be created by this greenbelt. The public understands that, and that's why there was such widespread support for it in both the recent municipal and provincial elections. The public simply wants it.

The greenbelt is not anti-growth, as some would have you believe. Ontario will grow by 2.5 million people in the next 30 years, with or without a greenbelt. But more people would come here if we let them. The question, then, is not if we will grow but how we will grow.

It is the dream of many citizens of the world to come to our great society in Ontario. Would you really believe the proposition that these people will stop dreaming of coming to our country if we have fewer 50-foot-wide lots available and more stacked towns? That's ridiculous.

**1100**

Home builders would like you to believe that there's a land supply crisis in Ontario and that the greenbelt will exacerbate this. Well, I'd like to perform a magic trick for you here. If the province required all future greenbelt developments to be built at a transit-supportive density, the so-called Leaside density, we would have a 45- to 60-year land supply.

Some people will tell you that the greenbelt is a radical idea and we simply can't afford it as a society. Well, I'd like to play another game called "name that



radical.” In the 1970s, a leader in the province created a greenbelt and set aside thousands of acres. He also set aside 450,000 acres in the Niagara Escarpment. That crazy environmental radical, Bill Davis, protected one of our truly great environmental features. Moving ahead two decades, that radical tree-hugger, Mike Harris, put 470,000 acres of the Oak Ridges moraine into protected status and, through the Living Lands legacy, he may have protected more acres than any other leader in Ontario history. All we are asking is for a 600,000-acre greenbelt to finish the job of protecting the Oak Ridges moraine and many other of our fine environmental features. If Dalton McGuinty can’t do that, he’s no radical.

We know that we can sustain this kind of environmental protection. We know that if we don’t do it, we are going to see a great reduction in our quality of life, our air and drinking water. We encourage this government to do it as quickly as possible and make it as robust as possible.

**The Vice-Chair:** We have about two minutes for each of the parties and we’ll start with the government side.

**Ms Deborah Matthews (London North Centre):** I want to go back to something you said, David, and I just want to make sure I’ve got this right. You said there was a 45- to 60-year supply of land available if houses were built at the Leaside density. Is that what you said?

**Mr Donnelly:** It’s also known as the transit-supportive density. Yes, that’s correct. Municipalities are required to keep a land supply on hand anywhere from 15 to 20 years. Most of them have it, but that’s built at a very low density. If it’s built out at a transit-supported density, which I think we all agree is appropriate, then we have a much larger land supply than is currently being advertised.

**Ms Matthews:** That’s in the GTA you’re talking about?

**Mr Donnelly:** That’s correct.

**Ms Matthews:** Anything you could supply us that would substantiate that would be much appreciated.

**Mr Donnelly:** I’ll make a note.

**Mrs Munro:** Thank you for coming here today. Your presentation on page 2, part (d), “The greenbelt must be large enough to contain urban sprawl,” really follows on the question that has just been asked. This is certainly something that I think people recognize, having watched Toronto in one’s lifetime, having watched the communities in York region all kind of blend together. It’s hard to know where one ends and the other begins. You mention here about the transit-supported density. Are we talking about 30-storey apartment buildings? Tell me what that means.

**Mr Donnelly:** No; that’s a misconception. People use higher densities as a bogeyman, and that it’s a NIMBY syndrome. It isn’t. What it is is sensible development that you would find in any sophisticated international metropolitan area. At the centre, at the core, you do have high and medium density, where people have easy access to public transit. Out from that node, ringing that, you would then have the typical low-density, 30- or 40-foot

front lots. We are not advocating the abolition of the typical detached family home. All we’re saying is that when you build these new communities, you focus on public transit and then allow for typical urban sprawl, but it has to be a mix and it has to be built at a sensitive density.

We don’t talk about densities, we don’t talk about how many people you have to focus in an area to put them on public transit. We’ve never done that in the province, and we have to do that now in the context of the greenbelt. The greenbelt contributes to that. Who disagrees with the proposition we have to have more public transit in the GTA?

**Mrs Munro:** I guess one of the things is that, historically in municipalities, in making decisions with regard to planning, there’s been a reluctance to look at densities. But you’re suggesting that the 2.5 million people who are scheduled to come here are going to be prepared and be part of that kind of new vision. Is that fair to say?

**Mr Smith:** Before David answers, just a quick clarification: When we talk about transit-supportive density, it doesn’t need to be the same density over every square foot of ground. If you’re talking about transit-supportive density over a concession block, for instance, you can have apartment buildings in one place and single-family dwellings in another, but the average density is higher than that which is happening currently.

**Mr Donnelly:** In fact, if you look at the places where much of the new population influx or immigration comes from, they typically live in far higher densities than what we have here, particularly in the 905 area. So they’ll be coming to something with which they’re fairly familiar.

**Ms Churley:** Thank you, Dr Smith and Mr Donnelly, for your presentation. I’d like to congratulate the entire Ontario Greenbelt Alliance for the work it has been doing. It has been very helpful to the committee.

You mentioned highways, and that’s one of my big concerns with this legislation. We were in St Catharines recently and there were some who were saying—and I’ll give this as one example; although we’re not there today, it’s a good example. They were saying the highway being built through the Niagara Escarpment is actually a good thing because it will take some of the traffic away from the intense Niagara fruit land. I’m hearing a lot of why highways are actually good in that sense. I’m very worried about it, because from my understanding and what we’ve seen through history, as somebody said, I forget who, “If you build it, they will come.” I may be mixing my metaphors here, but that’s a real concern, that development grows around highways.

**Mr Smith:** Yes. I think you’re right, and the doctors, nurses and conservationists in our alliance are quite adamant about this. We’ve done this experiment. The parkway belt is one. This greenbelt very easily could end up as a temporary phenomenon that is eaten away by further ill-planned development, and further infrastructure development will facilitate that sprawl. So we’re completely opposed to the idea of the mid-peninsula corridor.



It's not a benign prospect. It will facilitate greater urban sprawl, and there are better answers.

Just to quickly conclude, it's unfortunate that even though the government is engaged in this exercise to discuss and plan for a greenbelt, the Ministry of Transportation continues with its planning, seemingly entirely disconnected from what is being discussed here. Certainly if all the roads and all the road extensions and highway extensions that the Ministry of Transportation is currently planning are acted upon over the next few years, there will not be much of a greenbelt left.

**The Vice-Chair:** Thank you for your presentation.

1110

### TOWNSHIP OF KING

**The Vice-Chair:** The next presentation is from King township, Mr Bob Casselman and Mr Stephen Kitchen. Good morning, everybody. You have 20 minutes and you may begin.

**Mr Bob Casselman:** Thank you very much. My name is Bob Casselman. I'm the chief administrative officer for the township of King. This morning I'm joined by Deputy Mayor Linda Pabst, to my left; the councillor from the Holland Marsh, Jack Rupke, to my right; and our director of planning and development, Mr Stephen Kitchen. This morning we will be providing our remarks to the panel between myself and Mr Kitchen.

First, on behalf of the township of King, I'd like to express our gratitude to the Chair and the committee to hear our concerns and our remarks with respect to the proposed legislation. As a means of some context, I'd like to provide you with a few details with respect to the township of King.

The township of King is a large, sparsely populated municipality of approximately 20,000 people steeped in its rural character. It's bisected by Highway 400 and Highway 9 and surrounded by the urban municipalities of Richmond Hill, Vaughan, Newmarket and Aurora. Our northern boundary comprises the southern half of the Holland Marsh. To a large extent, our growth is primarily focused in the three urban centres of King City, Nobleton and Schomberg, and to a lesser extent in some of our small hamlets.

Approval of Bill 27, the Greenbelt Protection Act, will provide the province the necessary time to study the area and protect environmentally sensitive lands and the fertile farmland and also to contain urban sprawl.

The township of King generally supports the province's intent to provide growth management initiatives in south-central Ontario and to protect both environmentally sensitive land and the agricultural base, as expressed through Bill 27. However, while well-intentioned, this legislation may have several inadvertent negative impacts on municipalities within the study area, and that's where we'd like to focus our remarks this morning.

The municipality is very concerned with respect to the unintended consequences to the local government, given that they are a result of the silo effect of policies eman-

ating from individual ministries. I've provided the panel with a number of different initiatives and policies that are ongoing that collectively are really resulting in a decreased impact to local autonomy and local decision-making. Some of these ongoing policy initiatives are the Oak Ridges Moraine Conservation Act, the growth management strategy currently being undertaken by the Ministry of Public Infrastructure Renewal, provincially identified lands for future gravel pits and quarries, and of course the proposed GTA highway corridors.

The second point I'd like to make to the committee is to talk a little bit about the study area and the concern that our municipality has with respect to the Holland Marsh. Indeed, if one of the intents of the legislation is to preserve fertile farmland, a strong argument can be made with respect to the Holland Marsh. The study area, as you may be aware, splits the Holland Marsh currently between our municipality to the south and Bradford to the north. I think if it's the intent of the legislation to protect fertile farmland, I would suggest to the committee that the legislation should be amended to ensure that it includes all of the Holland Marsh.

I want to spend a moment and talk to you a little bit about growth and what the potential impacts might be. There's certainly a projected population increase in the GTA of 1.8 million people over the next 20 years. Indeed, over the course of the last three years York region by itself has averaged a population increase of 40,000 people. Due to our demographic profile within Ontario and low birth rates, immigration has and will continue to be an important factor in our goal to sustain economic prosperity. People from across Canada and indeed the world will bring their skills, families and the dreams of a good job, affordable housing and a place for their children to play to live out the Canadian dream in the Golden Horseshoe. We are concerned that the proposed legislation will result in land use intensification, thus driving the price and affordability of housing beyond the potential homeowner's and business investor's means. To achieve their dream, they will seek affordable housing north of the greenbelt, further exacerbating today's problems.

At this time, I'd like to call on Mr Kitchen to discuss some of the concerns relating to the moratorium, and also some growth management issues.

**Mr Stephen Kitchen:** Thank you, Bob. I'd like to speak to you with respect to the moratorium. I can only speak toward King township, obviously, as it's our municipality, just to sort of illustrate to you some of the implications of that moratorium and what its impact has been on the township of King at this point in time.

The intent of the bill, as we understand it, was to place a moratorium on land use changes outside of the designated settlement areas in order to allow the greenbelt study to be undertaken. It was to prevent changes to urban land uses in the rural area. However, the minister's zoning order that was passed basically has the effect of prohibiting any changes, not just urban changes, in the rural area. The preamble to Bill 27 certainly indicates the



need for measures due to the threat to agricultural and environmentally sensitive lands from sprawling urbanization.

A review of the applications in the township of King that are being impacted by the moratorium, interestingly enough, only affects two properties: one being an attempt by a landowner to recognize an existing—what I'll term "illegal"—use, and the second being an application for an additional residence for full-time farm help, an application that we generally treat as one of the few tools we have to assist and encourage the preservation and farming of agricultural lands. So I guess what I'm trying to intimate is that, at least in King, given our current policy regime, there isn't a huge threat to that form of sprawl into the rural areas.

On the other hand, the township has undertaken several other initiatives. We've been working on what we term our rural area plan, and we've been working on that plan for many years. That plan was held up from being ultimately adopted originally by the Oak Ridges moraine plan, and now we're finding it's being held up by the greenbelt plan. That plan in itself was to provide the further protections that we felt were appropriate and necessary to protect environmentally sensitive lands and agricultural lands.

So we're finding it somewhat frustrating in terms of trying to carry out what we feel are our appropriate responsibilities. Council had undertaken and given us direction to prepare a new comprehensive zoning bylaw and, again, given the current minister's zoning order, we're prevented from proceeding with implementing new zoning that would, in fact, put in environmental protection-type zones, because it's changing the uses on those environmentally sensitive lands.

The second item that I wanted the opportunity to speak to you about briefly was just with respect to growth management. Clearly, part of the stated purpose of the Greenbelt Protection Act is to contain urban sprawl. I see that as trying to help manage and contain urban growth. However, before you can maintain and manage that growth, I think it's important to determine where that growth is, how much growth there's going to be, where that growth's going to be and where and how it should occur. To undertake this greenbelt exercise in absence, or in isolation of those other studies makes it very difficult.

We've already experienced and are seeing the effects of the Oak Ridges moraine and the leapfrogging of that moraine to lands further north. The analogy that we've always used is that, effectively, you're using a balloon and you're squeezing it in the middle. When you do that, it's going to bulge at the top and at the bottom. We're very much seeing that in terms of development applications both within the township of King and beyond.

We've had inquiries and research done by various applicants to look at development of the lands north of the Oak Ridges moraine in King, and we've done our best efforts to dissuade them. At this point in time, they've not come in, and they probably can't now

because of the greenbelt legislation. But in effect, you can see the impacts of that, without taking a look at the larger picture and trying to focus on where that will go.

So in a sense, I guess what we're suggesting is that you need to establish some overall management growth forecasting, identify where those are going and then put in place the proper tools, including potentially the greenbelt, to support it. That may be various legislation, it may be infrastructure, or the appropriate tools to support city building so you can have intensification where it's appropriate and you're not forcing the development beyond that protection area.

With that, I'll turn it back to Bob.

1120

**Mr Casselman:** Thanks, Stephen. What I'd like to do is share with the panel some practical examples of what the financial implications might be to municipalities such as the township of King as it relates to the proposed legislation. The municipality is very concerned with respect to the potential of the leapfrogging effect of development north of our municipality and the GTA and what the implications might be to our municipality. What I'd like to do is share with you some practical examples of what impact we feel today and what potential impacts we're going to be feeling in the future. I'll give you some practical examples.

The first thing I'd like to touch upon is the implementation of the proposed legislation. I'll draw on an analogy of the Oak Ridges moraine legislation that we're currently struggling to deal with. Currently, our municipality is covered by the Oak Ridges moraine act; 67% of our municipality is impacted by that legislation. As you know, we have to go through the exercise of integrating the legislation into our official plans and comprehensive zoning bylaws, and we've embarked upon that process, a lengthy process, a complicated process, a process that to date is incomplete and has cost the municipality \$140,000. The concern we have with respect to the greenbelt legislation is, who is going to be responsible for the implementation of the act and the coordination of what the legislative intent is going to be? If it's going to be the local municipality, is there going to be any sharing of costs with respect to the incorporation of the intended benefits of the legislation into the local OPs and official plans? While it doesn't sound like a lot of money, to a small municipality, \$140,000 represents about a point and a half. So it's fairly significant for small municipalities.

The second example I'd like to bring to your attention is, having said that the municipality is impacted to the tune of 67% by the Oak Ridges moraine, that in itself will limit growth or provide very strict, stringent guidelines with respect to growth within our municipality and, as such, we're looking forward to low to modest growth over the course of the coming years. Our population today is 20,000, and we're projecting a modest growth up to 35,000 people over the course of the next 20 years. So as you can see, we're going to have modest growth. The concern is that while the combination of various pieces of



provincial legislation are going to have a negative impact with respect to potential growth within our municipality, as such, with the infringement on our growth and the ability to sustain ourselves economically, we're going to be challenged by trying to deal with the impacts of growth all around us. Quite frankly, we have been and are continuing to deal with the growth-related pressures that are not happening in our municipality, but are happening around us and indeed are having an impact on our municipality.

I'll give you a simple example. I'll talk to you about our fire and emergency services department. Our municipality is bisected by Highway 400. There is growth happening around us and to the north of us. It has resulted and will continue to result in the municipality having to go to a full-time fire department. Currently, we have a volunteer system. With the trends that have been occurring over the past five years, the number of medical assist calls emanating from the 400-series highways will result in us having to go to a full-time complement. The impact to a small municipality such as ours is, we're estimating, to the tune of about a 20% tax increase as a result of having to go to a full-time department to service the growth-related needs and pressures from municipalities around us.

So the restriction in legislation is inhibiting our growth; however, it's exacerbating the problems that are around us. We are still feeling the pressures of growth from area municipalities, yet do not have the benefits and revenue flow to properly deal with those growth-related costs. It's a very significant item.

The other issue I'd like to bring to your attention is concerns about leapfrogging and 400-series highways. There's been much movement afoot with respect to the expansion of Highway 400 and potential expansion of Highway 427, both perhaps going through our municipality. The concerns that we have flow from those highway expansions and the east-west need of arterial roads throughout our municipality. Currently, York region is trying to expand the east-west corridors throughout our municipality, adding six lanes. So we're feeling the pressures of growth and having to deal with those. The challenge is we're not getting the benefits from the growth, yet we're having to deal with the traffic congestion, pollution and all the other issues associated with the growth around us.

The concern that I have is—and we're very proud of this in King township—we're steeped in rural history and we'd like to preserve that just as long as we can. The challenge is that the growth is happening all around us. It's making it virtually impossible to revitalize downtowns, preserve our downtowns, preserve our very rural character that we have within King township and that we're very proud of. The challenge is, with 20,000 cars going through King City, Nobleton and Schomberg on a daily basis, it's pretty tough to create a downtown atmosphere and try to preserve the rural character of our municipality.

Those are some of the challenges we're facing in King township and some of the implications that we feel are going to be negative toward our municipality as a result of the greenbelt legislation.

Comments or summation to the panel: Controlling urban sprawl, along with preservation of fertile farmland and the environment, comes at a cost. Let's ensure that the cost and potential benefits of the proposed greenbelt legislation are evenly distributed. That really concludes our remarks. I'd be happy to answer any questions the panel may have.

**The Vice-Chair:** We have about two minutes left, so I'm going to ask all sides to be very quick.

**Ms Churley:** Thank you for your presentation. I can't get into the things I wanted to specifically, so I'll dwell on the issue around cost. That's becoming more and more of an issue for smaller municipalities as you see more and more government legislation, generally legislation that I support: the Nutrient Management Act, this, the Safe Drinking Water Act and stuff. I'm hearing more and more from municipalities that they need to have more development because that's the only way they could see revenue coming in to help them pay for these things. It's a Catch-22. Do you have a comment on that? Are you seeing more of that, that the more development is squashed as you're getting more government legislation to do all these things, it puts pressure on, in fact, to get more development?

**Mr Casselman:** That's a good question. I think that some of the challenges of the committee and the legislation—I know there's some intent to create policies to try to preserve farmland and environmentally sensitive areas, whether it's tax incentives or giving people breaks on assessment, as we have done in the past. Municipalities rely upon the assessment base for their revenue stream. From our perspective, we know what the future holds. We know what we want as it relates to the rural character of our municipality. We know and appreciate that we're going to have limited growth. That's what some of our goals are—

**The Vice-Chair:** Thank you very much for your presentation. Actually, it's my fault. I let that go a bit too far. Just quickly, from both sides.

**Mr Lou Rinaldi (Northumberland):** Thanks very much for the presentation. I can appreciate your concerns about keeping the rural—controlling growth. If you ever find out how to do that, I'd be really interested, because that's a real conflict.

The Oak Ridges moraine takes about two municipalities in my riding—a large chunk, probably 50%. One of the phenomena that's happened since the legislation went through is that the assessment level of what's there now in those municipalities has gone sky-high. So it is generating some extra revenue. Whether it's enough or not, I'm not so sure. It was really a comment, but is that the scenario in your case, where your existing assessment has gone up?

**Mr Casselman:** Certainly there has been an impact with respect to activity or lack thereof. Councillor Rupke



is in the real estate field. He might better be able to comment than myself on how values have appreciated as a result of the legislation.

1130

**Mrs Munro:** Just one comment. It seems to me, in listening to your presentation, that the key here is the question of the need to have a plan for growth before a moratorium. If you look at that comment you made, that would then put us in a very different position than we find ourselves in, where you see the lack of coordination among provincial initiatives, the problem of the realistic costing of services like fire and things like that. I would suggest that the government look at the initiative they've undertaken in Bill 27 from the point of view that what was required perhaps was a better look at the Smart Growth panels and the kind of work they were doing in developing their plans for growth, and then looking at where you want to put a moratorium, where you want to establish those areas. It seems to me you're struggling now with kind of the cart before the horse on this initiative.

**The Vice-Chair:** Thank you for your presentation.

#### REGION OF YORK

**The Vice-Chair:** Next we have the region of York, and presenting on their behalf is Bryan Tuckey, the commissioner of planning and development services.

**Mr Bryan Tuckey:** I want to start by thanking the committee for allowing us to attend today. Chair Bill Fisch was planning to attend, but previous or other engagements meant he was able to send me. I'm Bryan Tuckey, the commissioner of planning and development services for the region of York, and I will go through the presentation in front of you.

You have to put all of what you're doing into context, and I'm sure you're going to hear this during the course of the day and in the course of your discussions and deliberations. York region is one of the fastest-growing municipalities in Canada, with a 2003 year-end population of just over 866,000 people and an estimated employment of 415,000 people in some 25,000 businesses. By the year 2026, which is about 20 years out, this region will have a population of almost 1.3 million people and employment of 700,000 people. That gives you the enormity of the change and the growth in this region.

I'd like to put the idea of 40,000 people a year into context for you, because it's quite nice. Forty thousand people a year means that the equivalent of the town of Aurora has moved to York region each and every year for the last five years.

I'd like to first put forward the general position on the greenbelt legislation. The council of the region of York, at its meeting of January 22, endorsed a report, with its recommendations, and supported the intent to provide growth management initiatives in south-central Ontario and to protect the environmentally sensitive land and the agricultural base as expressed through Bill 27. York

region further supports the proposed changes to the Oak Ridges Moraine Conservation Act as proposed by this bill.

Within this support, though, I must put forward two important things that were caveats to this legislation which our regional council discussed. The first is to provide for the construction of necessary infrastructure to support this growth throughout York region and York region's local and regional municipalities. The second is other important public projects to support the population growth as well, things like the material recycling and recovery facilities we're in the process of constructing now. The legislation does limit some of our ability to finish our construction of these.

York region is still of this position and is heartened to see the proposed changes to the minister's zoning order which would permit some consideration of the development applications permitted during the moratorium. However, more detail of the province's specific changes, either through the minister's zoning order process or through the approval of the legislation, is needed. Our specific public facilities have been previously identified to the Greenbelt Task Force and to the Minister of Municipal Affairs.

With this context, those are two items I specifically must speak to, but I'd also like to talk about some of the overarching themes in government direction. I'm a planner. I've been a planner for 25 years, and I've worked in all three levels of government in Ontario. Bill 27 is a necessary first step to enable the province and its partner regions, municipalities and stakeholders to refine existing and additional greenbelt components. Meaningful, thoughtful public consultation is necessary to shape the greenbelt components. It's the region's intention to participate in an ongoing consultation exercise, and we will make presentations to the task force based on the discussion paper recently released and further information released by the task force.

York region considers itself a leader in environmental planning and land securement activities. Greenbelt components are well defined in York region today, with the Oak Ridges moraine official plan changes, our regional and local greenlands systems and north-south river valley protection. Many of these elements are already providing protection, although perhaps not to the extent envisioned by some on the task force, and are well established within the local regional official plans and planning documents.

The region of York is in active partnership with the Oak Ridges Moraine Foundation, the Oak Ridges Moraine Land Trust and the Nature Conservancy of Canada and has developed an acquisition and securement strategy for key environmental lands across the region. These partnerships are gaining momentum and have been working to secure a greening legacy for the region and the people who live in this region. To date, our program has annual funding of \$1.4 million, and work with our partners has been successful in securing in excess of 400 acres of priority greenlands in this region since 2001. In fact, we were quite pleased that the Nature Conservancy



of Canada chose to promote and announce their masterpiece program for the entire country of Canada in York region, in the Happy Valley area, last week. You may have seen it on the CBC news.

This is putting words into action. I stand in awe of York region council. I have the best planning job in Ontario, and they consistently put plans into action. Those will be the challenge that this committee has as well.

There are some necessary components that fall within the purview of the Greenbelt Protection Act that merit careful consideration. I'll go through them slowly, because there are improvements that I think the legislation could make to help greenlands. Help us with:

—Tableland woodlots and how they are secured.

—Wetland systems on and off the moraine and how we can secure them in a better way.

—Agricultural lands. The GTA agricultural group, of which I'm a member, has a strategy. Maybe it's time to start to implement the GTA action plan on agriculture, and I'd be happy to deal with that in any committee at any time.

—The upper reaches of the streams and the linkages between those areas on the moraine where you have opportunities to build linkages.

As Steve said very well earlier, you cannot look at this in isolation. I think that's the challenge for this group and those who embark down this path. The first step in the protection is that the province should develop a proactive provincial policy statement to support our established urban structure and growth management and city building initiatives. We have heard clearly in our consultations on centres and corridors, the Oak Ridges moraine, the transportation master plan, Vision 2026—I can go on forever on these—that it's not time for a new plan. The plans are there; it's time for action. The people have told us over and over again, "Let's translate these plans into some sort of action."

1140

Further, if it is the province's intent to protect natural features and systems, of which we are in full support, then additional initiatives must be implemented to do, I would say, at least four things. First, promote city building in our existing settlement areas. Second, consider key infrastructure needs; I can't stress that enough, as I've come from a meeting of about 200 builders and construction people who put in excess of \$6 billion a year into this economy, and some of the issues we're having now in getting key infrastructure approvals through various levels of government. Third, prevent leapfrogging of development over the moraine and greenbelt areas. Fourth, implement the agricultural action plans that we have in place now. To give you a sense, agriculture in the GTA employs in excess of 35,000 people and adds about \$2.3 billion to the economy every single year, so it's a big industry here in the GTA as well.

Since 1994, with the approval of the York region official plan, the region has implemented advanced growth management and community building plans. Our

successes include comprehensive, compact community building in the face of population growth of in excess of 40,000 people per year, firm urban boundaries, and greenlands policies and structure that I think are second to none in the province. We've implemented strength in our agricultural policies and we're very strong in our fiscal analysis.

We recognize, however, that improvement is needed. We're just finishing an economic strategy, and it's quite interesting to see what our businesses tell us, because they're all on this list as well if we want to remain competitive in the next number of years: transit, housing, intensification, and support to our centres and corridors. That's the other side of the equation that must be considered during the course of your discussions.

In order to make these improvements, we require four areas. I use boxes when I talk about policy, and there are four distinct areas of policy that must be discussed and understood. First are the fiscal and financial tools. I'd challenge this committee to look at the fiscal tools and how they work, because that is generating the development we're getting in the region. Second are policy changes and supporting programs. Also needed are infrastructure investment, and public sector involvement in public education.

I'm at 10 minutes, so I'm going to cut through a little bit, if I may. I'll go to some of the specific requested changes to draft legislation.

Just to give you some sense of that, Bill 27 is an enabling tool for further work to occur, but for this further work to occur, the legislation must be given third reading and proclaimed quickly. This will afford residents, businesses and governments some certainty to continue on in their programs. We've specifically written to Minister Gerretsen on our particular public project issues that we would like to have resolved over the course of the next number of months.

With that, I would like to suggest three changes, because we are dealing with the legislation today. I realize that.

It would be helpful if we had a change in the definition of "urban settlement area" in both the bill and the zoning order to recognize as an urban settlement area those non-agricultural uses that comply with an applicable official plan, without reference to upper, lower or single-tier municipalities; just whatever the applicable plan is in the area.

Regarding the changes to the proposed Oak Ridges Moraine Conservation Act, the region supports changes to sections that have been a bit problematic—that is, regarding the transition of applications. We would respectfully request, though, that these changes be retroactive to the date of passing of the moraine legislation, not the Greenbelt Protection Act, as originally proposed. What it does is give you two triggers for transition. One date, the original Oak Ridges moraine date, would probably, in my humble view, be the appropriate one.

Third, we note that the Greenbelt Protection Act is proposed to be repealed on December 16, 2004. As cur-



rently worded, it could be argued that when the Greenbelt Protection Act is repealed, those sections that have made changes to the Oak Ridges Moraine Conservation Act would also be repealed. We respectfully request that the changes to the Oak Ridges moraine act remain in force and effect beyond the sunset date of the Greenbelt Protection Act. I'm sure your staff have picked up on that, but as we're talking about legislation, I think I should add that.

The province has embarked on a far-reaching and important initiative with the introduction of Bill 27 and other proposed bills. They cannot be looked at or formulated in isolation and must all support other growth management initiatives and city building initiatives.

Southern York region now is a city. It's changing and is going to continue to change. We will continue to assist the province in the achievement of these initiatives and look forward to the province's support in future official plans and other regional activities.

I'm sorry I took a little bit too long, but I'd be happy to answer questions. I would be pleased to give you any statistics you would like for anything I've said.

**The Vice-Chair:** Thank you very much. Any questions from the government side?

**Mr Delaney:** Thank you very much—a very interesting presentation. While I'm not normally prone to ask a long question, I think this one requires a sentence or two of preamble. With York and Peel regions especially both growing to a little more than one million people, I'd like you to explain to me, consistent with the preservation of green space, how you think we should be linking the Halton, Peel, York and Durham areas of commercial concentration through mass transit links, without sending that commuter traffic through Toronto or compromising our green space.

**Mr Tuckey:** That's an excellent question, and I'll make my best efforts to answer it. For those who aren't aware, the region of York has embarked upon what we think is a rather aggressive transit plan. That transit plan, for us, is four corridors: Yonge Street, Highway 7, and then linkages from Vaughan city centre to the subway, and from Markham city centre down to the Don Mills subway station. Those plans have been so well taken that the city of Brampton has linked their transit plans to our initiatives, and Brampton has further linked those to Mississauga. So the short answer would be that you'd start at Mississauga city centre, come up Highway 10, I believe, and across Highway 7.

Transit's the key here, sir. I just can't emphasize it enough. Steve said it fairly well. You're probably well aware that the GTA is the second-fastest-growing area in North America, and it is going to continue along those lines. Frankly, the transit and how we do our investment south of the moraine are so key now to see whether we're going to actually help stop the leapfrogging or even intensify uses along those arterial roads.

Hopefully, that helps answer your question.

**Mr Delaney:** It was very helpful. Thank you.

**Mrs Munro:** Thank you very much for coming forward today. I could ask you about the agricultural plans, but instead I'd like to ask you about the question you raised, which I think is critical, on page 4, with regard to the need for "fiscal drivers and financial tools to shape urban form and act as a catalyst for compact development."

One of the keys to this whole issue is the question of leapfrogging. That's certainly something we've seen in other jurisdictions, so if we're to look at this, we need to look at how we avoid that. I wonder if you could provide the committee with any ideas you have with regard to what would make compact development. What are the things you need?

**Mr Tuckey:** That's a great question, and thank you for asking it. Just to give you a bit of history about me, I spent a lot of my career in the city of North York and have my name all over the Sheppard corridor, the south downtown and a lot of the development in that area.

What you need to start to do is to look at everything from a practical standpoint. You might want to look at the Bank Act. Why are developers required to pre-sell so much of a condominium unit before they actually are allowed to build? You don't have to be much of an accountant to understand that you can do one-offs and register things simply, from a practical standpoint.

The second thing is that you've got to try to initiate and generate some demand. Transit does do that, and it does effectively deal with land prices. In Toronto, about \$1 million an acre will start developers to think about going up instead of out. In southern York region, we're very close to that. In fact, some of the anecdotal evidence we see in York region, from a practical standpoint, is that raw subdivision land is selling for in excess of \$300,000 an acre. So you start to deal with those types of issues.

From our standpoint, we've got to look at development charges, which is part of our strategy. You have to look at parking, because parking in underground parking is one of the biggest hard-construction drivers of a high-density development.

#### 1150

From the Greenbelt Protection Act, I would challenge you to look at—I think one of the things that we've had great success in our greening strategy is that—it may not be provincial—large development firms write off their land like chattel, like inventory. So when you get to the point of actually developing and you want to start to negotiate over environmentally sensitive lands, if they haven't written it off, they're very interested in working with us and the Nature Conservancy to use the environmental grants through the federal government. But if you've written it off, you can't double-dip from a tax standpoint. So you have to look at all the tax drivers that are there, and that's why I've always advocated that it's very important to get the Minister of Finance to the table to look at corporate tax. It's not changing, just sort of gradually changing.



**Ms Churley:** Thank you very much for your presentation. I wanted to ask you about Boyd Park in Pine Valley. Is that within your—

**Mr Tuckey:** The Pine Valley extension, yes.

**Ms Churley:** It's listed as one of the 10 hot spots by the Ontario Greenbelt Alliance. The information provided suggests that it's an old-growth forest and there's going to be a 400-metre long bridge, four lanes wide within Pine Valley, which will cause damage to the East Humber River and threaten the environment. I'm sure you've read it. Why has the region of York decided to support that instead of the park and putting the money into improving and encouraging transit use in Vaughan?

**Mr Tuckey:** I guess I'd try to answer that this way. Again, there is a mile-and-a-quarter grid in York region, and Pine Valley is one of those mile-and-a-quarter arterial roads. What you find is that it's always choices, and that's what we're faced with every day. The choice is to not build the Pine Valley and possibly widen roads for the short term, which our residents frankly couldn't walk across, or do the mile-and-a-quarter grid as an arterial road. From a planning standpoint, in north York the mile and a quarter isn't even a fine enough grid to distribute traffic. It's just choices that have to be made and I'd balance that—

**Ms Churley:** Can I interrupt a second just to say the city's own environmental review—

**The Vice-Chair:** Thank you, time is up. Thank you very much for your presentation, Mr Tuckey.

#### STORM COALITION

**The Vice-Chair:** The next presenter is the STORM Coalition. Representing them is Debbe Crandall. You may begin any time.

**Ms Debbe Crandall:** Thank you very much for this opportunity to appear before this committee. Just a little bit of background on STORM—Save the Oak Ridges Moraine—Coalition. We were founded in 1989 as a collective voice to articulate the need for legislative protection for the Oak Ridges moraine. We currently have over 20 member groups from across the moraine and I'm happy to say that there's a very vibrant environmental network between moraine citizens and denizens and that of the whole greater Toronto area.

The STORM Coalition sat on all of the provincial initiatives on the Oak Ridges moraine, 1991 to 1994, and then again in 2001 as a member of the moraine advisory panel.

In December 2001, we celebrated quite a victory, I think, when the collective efforts of a decade-long campaign to save the moraine were in fact brought to fruition with the passing of the Oak Ridges Moraine Conservation Act and then six months later with the conservation plan. We strongly support this moraine legislative package because, first and foremost, the moraine plan and act are an ecologically based conservation effort. I think it's important when we're discussing a greenbelt

study area that we look at the vision that is contained for the Oak Ridges moraine, and that's part of the regulation.

It says, "The Ontario government's vision for the Oak Ridges moraine is that of a 'continuous band of green, rolling hills that provides form and structure to south-central Ontario while protecting the ecological and hydrological features and functions that support the health and well-being of the region's residents and ecosystems.'" I'd say that that is a robust definition that could in fact be translated to include all of the greenbelt area, this idea of continuous connections and, what I like, the socio-ecological and economical sustainability definition.

I think it is to the credit of this current government that they continue to be very supportive of the moraine effort and protection of the Oak Ridges moraine, and with the greenbelt study area and this whole concept of a greenbelt in fact supporting it even further by providing an ecological buffer to the Oak Ridges moraine.

It has been almost two and half years since the moraine act became law, and I think it's obvious that a number of problems that were part of the original wording have become evident. So we're very pleased to see Bill 27 contain some amendments to the Oak Ridges Moraine Conservation Act.

Section 15, I think, is an important one, because as an NGO working with municipalities as they were going through their conformity exercise, one realized that there was a lack of clarity as to what was the province's intent regarding existing uses versus legal non-conforming uses. I think this is an important section to clarify that issue.

For one thing, a golf course that's in a natural core area, which is not a permitted use, can continue to exist but is legal non-conforming, and while there are still rights associated with that as an existing use, it clarifies that golf courses are not permitted for a number of reasons. So for that purpose, we strongly support the amendment of section 15 as part of Bill 27.

I'd also like to say that I agree very strongly with Mr Tuckey, the previous presenter, in the sense of the timing that is contained in the sunset clause of Bill 27. It should be amended to reflect the fact that it goes back to that of the Oak Ridges moraine act.

I think section 17 of the moraine act has probably been the most problematic. It closes a loophole that, in our opinion, if left open, has the potential to allow for much more unwanted development on already stressed parts of the Oak Ridges moraine, and that is within the region of York, primarily.

The original intent of section 17 was to allow for a reasoned processing of applications that had been fully commenced and were well along in the planning process. If further approvals, for instance, were a condition of draft plan approval, then section 17 was designed to allow that to happen.

However, the broad wording of section 17 as it currently exists has created a situation—in this case, in Aurora—whereby the decision of local council, who very



clearly said they did not want 40 acres in an OPA to proceed forward as if it were a settlement area, was overturned when developers appealed this to the Ontario Municipal Board under section 17 of the Oak Ridges moraine act. They said that because further approval of a regional OPA was required, it immediately triggered it as a transition item and, as such, could proceed. That unfortunately has happened, and it's my understanding that as no other parties came to support any other position, the board has decided on that, and this land is in fact going forward as development.

I think that that's a tragedy, because that was never the intention of the Oak Ridges moraine act. So we feel that unless this misinterpretation of the original intent is immediately redressed, a precedent will be set that will make a mockery of the intent of the Oak Ridges moraine act. I know that during the workshop developers are crying foul, that in fact they say the government is changing the rules halfway through the game, but it's our contention that it is the developers who are trying to make their sets of rules. So we strongly support section 17 to be amended as laid out in Bill 27.

Section 18, I think, is necessary to bring those areas that are now before the Ontario Municipal Board more into alignment with the timing established with the greenbelt initiative. So again, we support this.

**1200**

On the other sections of Bill 27, section 8 lays out a process for changes to be made to the boundary of the greenbelt study area. There's no question that the current boundary of the greenbelt study area will not allow the government to achieve the goals set out in the preamble to the bill.

The powers given to cabinet through section 8(a) of Bill 17 to make a regulation to change the boundary of the greenbelt study area, in our opinion, should be invoked immediately to include lands to the north of the Oak Ridges moraine in Simcoe county and any other lands that are now facing unprecedented development pressure. Simcoe county is within the Nottawasaga and Holland River watersheds—two very significant watershed systems. The Holland feeds into Lake Simcoe, which has a \$21-million remediation program. It's already under incredible stress, and Georgian Bay has similar constraints. Agriculture is a mainstay of the whole socio-economic fabric of Simcoe county.

In our opinion, if these arguments are not compelling enough, the infrastructure needs—all of the highways, water, sewer pipes, whether they come from the north or the south—to service this leapfrog development—I think you've heard that term "leapfrog" a few times—will, without doubt, jeopardize the integrity of this greenbelt. It can be difficult to imagine how the continuous nature of the moraine, or the greenbelt itself, can be achieved with even more 400-series highways running straight across the moraine, the Niagara Escarpment, or more big pipe projects.

In our opinion, it is one thing for Bill 27 to be silent on the issue of infrastructure; it is quite another thing for

Bill 27, through its shortcomings on issues of dealing with this leapfrogging, to actually guarantee that the greenbelt study area will become nothing more than an infrastructure corridor.

Our preferred approach for Bill 27 would be to expressly include a clause placing planning and approvals for all new highways and major infrastructure projects in abeyance. However, in the case that this cannot be done, increasing the study area to include Simcoe county and freezing planning until certain studies are underway will achieve a similar end. We would also urge the government to remain committed to the protection in perpetuity of all the lands within the Duffins Rouge agricultural preserve.

In conclusion, STORM strongly supports the intent and vision of Bill 27. However, as we have stated many times in the past, the identification of a regional natural heritage system, ie the greenbelt, is one of only three necessary pieces to achieving our objective—Smart Growth or whatever you want to call it—which is stopping this insanity. The others are the growth management strategy, which is currently underway for the Golden Horseshoe, and a regional transportation master plan, which is an essential component of this. These three components must be brought forward concurrently and integrated and implemented simultaneously.

On behalf of STORM, thank you very much for this opportunity. This is an extremely important piece of legislation and we look forward to seeing it as it moves forward.

**The Vice-Chair:** Thank you. We'll start with the official opposition.

**Mrs Munro:** Thank you very much for coming here today. The thing that I see coming from your comments that the government needs to give serious consideration to is your final conclusion. We've seen a number of speakers who recognize the fact that there are three components. The question of management of growth is certainly one. I think the announcement of the moratorium in the fall set in motion a whole group of reactions to the problem of a transportation corridor. Looking at something like Ottawa, for instance, the greenbelt then becomes a way of getting from point A to B. These are all issues that I think many have identified. I think it's particularly important that coming to the committee from a variety of sources is an understanding of the fact that growth management is key to being able to move forward in any way with any kind of protected land. I would just compliment you on that and the fact that it's certainly something that is emerging as a strong message for the government: Look at smart growth.

**Ms Crandall:** I went to the Web site and got the names of what I thought was the standing committee and I obviously have got it wrong, so I apologize for my little cleverness at the front. Sorry I missed you guys. The Web site must be wrong.

*Interjections.*

**Mrs Munro:** We're allowed to substitute.



**Ms Churley:** Good to see you again, Ms Crandall. I wanted to ask you specifically about the highways, because I'm really concerned about that. You know governments love highways, and I think it's going to be a real battle and a challenge to keep those out of the mix, although I'll try, or at least get them in abeyance, as requested. In the meantime, what we need to do is persuade people why these are so wrong in the greenbelt and what can be done instead, in one minute.

**Ms Crandall:** All I can do is look to an example outside of Canada, the Portland, Oregon, example. They had a similar situation where they had a western bypass highway. They were proceeding forward. Even though they had done their firm urban growth boundaries, they had looked at this, they had not made the connection between transportation and planning. A group of individuals were able to illustrate and bring forward the fact that we have to look very clearly at what is the need for this infrastructure. They were able to expand the environmental assessment process to do that. It would cost them a lot of money, but they made such a compelling argument that when the numbers came through, when they truly put those numbers together, it was overwhelmingly obvious that there was no need for this highway, it would not accomplish what they wanted it to, it was going to cost more money. When you integrate it into the local smog plans, all of these—and it's an integrative process—it's the people you have to convince. I think that is too long of a process to get that kind of sustainability.

We've got to make that argument to the decision-makers: the Minister of Transportation and the finance minister. The cases can be made. It's a matter of having an ear and working with them, and I don't think there's any doubt that the outcome is very overwhelmingly that that is not the way to continue to move forward.

**Ms Churley:** I agree.

**The Vice-Chair:** Thank you very much. Any comments from the government side?

**Mrs Van Bommel:** Most often it's people who like highways. I wonder how you would envision moving people through a community if we don't have highways.

**Ms Crandall:** In this instance, we're talking about this leapfrog development, which is going north of the moraine. That is the frontier that we're particularly concerned about, not just because of the impact on the moraine but because of the overall principle of this. So number one is to create those areas where there's going to be development whereby you don't have to reach them through new infrastructure, new road systems, so that the concept of infilling, developing smartly within existing boundaries, can be made available—that transit can in fact then service that.

The issue is that a lot of people would probably want to travel by transit if they could get to where they want to go in time. For me, to get from where I live to downtown Toronto is half an hour longer by transit. So if I'm in an organized mood I will take that time, but half the time

I'm not. I'm just never on time. You saw me race in here. Thank God Bryan was long-winded.

The options aren't there, and I think that is the first thing. I don't think we can spend all our focus on the education, bringing the message. We've got to provide that infrastructure so that people see it's there and it comes to them rather than their coming to it.

**Mrs Van Bommel:** Thank you very much for your presentation.

**The Vice-Chair:** It's 12 o'clock. We'll recess now for one hour and come back at 1 o'clock.

*The committee recessed from 1208 to 1303.*

## TOWN OF NEWMARKET

**The Vice-Chair:** Good afternoon. Can we start this afternoon's session of these hearings? The first speaker for this afternoon is Tom Taylor, mayor of the town of Newmarket. Good afternoon, sir. You have 20 minutes. You may begin any time.

**Mr Tom Taylor:** I will not use my 20 minutes, unless you decide to do so. I have given you a package, Mr Chairman, and there is a letter in there. The letter explains that the submission inside the package was directed to the Greenbelt Task Force, which I addressed last night. In reading this, I hope you will understand it. It's directed to them, but the message and the content are the same. I thanked them for their dedication to what they're doing, and I sincerely meant that. I read all of their bios, and they were certainly to be congratulated. Also, I consider the task they're undertaking to be second to none in Ontario, even given the budget, in that comparison. The reason I say this is we only have one chance to do this, and to do it right.

Here again, I'm speaking to the task force, somewhat similar to yourselves. Your task is to ask your fellow Ontarians what they think about permanently protecting green space across the Golden Horseshoe. To me, it's a slam dunk: 99.9% of the people will say, "Yes, do it, and do it today."

Your problem, and now I'm referring to you as the Legislature, will be where to start and stop, and why; how you deal with the intrinsic rights of landowners within the greenbelt; and the ripple effect of the greenbelt.

The context of your task is three and a half million people coming to central Ontario in the next 30 years, and that will require an area twice the size of the city of Toronto or an area almost two thirds of the entire size of the region of York to accommodate them.

The framework of your task is—and this is taken from different provincial ministry and greenbelt publications:

—"Greenbelt protection is one component of a number of government initiatives to manage growth and mitigate sprawl," the Ministry of Municipal Affairs and Housing.

—The vision and goals the Greenbelt Task Force has established.



—“When rapid growth is not accompanied by long-term planning on a regional scale”—I’m not sure what they meant when they referred to a regional scale, but obviously it means a larger scale than our current planning jurisdictions, and by that I mean the regions and the municipalities or the counties—“inefficient development patterns can result. These patterns include increased air and water pollution, loss of green space and agricultural land, inefficient infrastructure investment, and fewer transportation options,” from *Toward a Golden Horseshoe Greenbelt*, page 6.

—The work of the Smart Growth committee and their recommendations relative to intensification within designated urban areas.

—The Ministry of Public Infrastructure is developing growth management for intensification and transit investment in an effort to reduce the demand for new land.

—Your task force discussion paper on page 9: “Layers of a Greenbelt.” Those layers are environment and agriculture, including the grape lands and the Holland Marsh. There is an asterisk there, and that refers to the other large marsh areas comparable to the Holland Marsh in this area as well. You refer to transportation and infrastructure, natural resources, culture and tourism.

I fully appreciate their mandate and your mandate, but I would suggest to you that the influx of three and a half million people will create tremendous pressures on the areas immediately adjacent to the greenbelt and the Oak Ridges moraine.

To me, the answer is not to accommodate them within Hamilton, Halton, Peel, York or Durham, nor in the areas on the fringes of the five above-noted areas. If we—and I mean you, because that legislation, authority, responsibility and ability rest with you—do not plan to disperse our population through incentives, infrastructure, policies etc, we will end up with a megalopolis like some of the cities I have observed around the world, with their inherent problems.

I refer you to appendix A attached, which is a proposal to put 115,000 people in an area between Bradford and Bond Head, which is touching the boundary of the greenbelt itself. If you go out to the 400 and drive north to the end of the Holland Marsh, which is to be considered in this legislation, the area I’m talking about is immediately adjacent to the Holland Marsh. In my mind, this type of urban sprawl is totally contradicting the vision and goals of the committee, the Ministry of Municipal Affairs and Housing, Smart Growth and the Ministry of Public Infrastructure Renewal.

I digress a bit here, but I think it’s important. Our government structure and electoral representation permit, and indeed foster, urban growth that is not conducive to sustainable communities, to protecting our environment or to providing a live-work-play environment.

1310

A number of years ago, the Honourable Darcy McKeough and the Honourable Paul Hellyer both proposed a ring of medium-sized cities, plus or minus 500,000 in population, that would be removed from Toronto but

would be connected with high-speed rail systems. The size of these cities would permit full-scale educational and health facilities, plus recreation and employment; in other words, a financially sustainable community that minimizes infrastructure and operational costs and protects the surrounding environment by eliminating urban sprawl and provides almost everything you require.

What we experience today is just the opposite of that. The idea of municipalities being financially sustainable is impossible, given the way we are growing and the discontinuance in the way we are growing. I think we should grow from the centre core out and that all the services related to it can be much more economically provided.

Attached also is appendix B, which identifies two things. One, the dotted line directly north of the west half of York region and the east part of Peel region is where the 115,000 new people are proposed. If you look at the map, you will see that the greenbelt legislation, in fact, frames that, with the exception of the northern part of it. It’s to the south, it’s to the east and it’s to the west, and we’re going to put 115,000 people into that area. The second thing is the blocks, or areas where the medium-sized ring cities are suggested. These are not my suggestions. These are from the honourable people I mentioned. Those are cities such as Kingston, Peterborough, Barrie, Owen Sound, Kitchener-Waterloo and London. So you have this ring around it and you have a high-speed transportation system connecting them. At the same time, you have financially and socially viable cities in that area of a half million, approximately.

I said to the task force that it would be easiest to set this aside, as it is not fully part of their mandate, but I think it is part of your mandate as provincial politicians. I cannot stress strongly enough that to concentrate only on the greenbelt will, in my opinion, provide a solution to only part of a greater problem.

Again, my sincere thanks to you for holding these sessions here.

I know this is not directly related to Bill 27, but I don’t think you can deal with Bill 27 and the ripple effect of it without considering some of the other things. If we are going to do that, then perhaps we should do it in a much larger context and try to give some direction to the—when you go to Kingston and the setting it has, or you go to Peterborough, Owen Sound or Barrie, the beautiful settings they have. Why we’re not trying to make these communities more viable than what we are doing to our communities now, where we’re jumping 10 miles or 15 miles and establishing another community—think of police, fire, water, the sewers, anything. It’s just not a practical way of doing it. It needs direction, not only from the greenbelt but, I would suggest, from the Legislature.

**The Vice-Chair:** Thank you, Mayor, for your presentation. We’ll start off with the NDP, who have just a little bit over three minutes. I’d like all three sides to keep that in mind in asking questions and making your comments.



**Ms Churley:** Thank you very much for your presentation. I believe your area was the subject of a Toronto Star story recently. I read it with great interest. It's good that you're here today to talk to us personally about your concerns. The question would be, how would you see the greenbelt being redefined to take your area into account? You want to expand and extend the area that's included in the greenbelt, as I understand it.

**Mr Taylor:** I haven't looked at the greenbelt in detail in terms of the effect it would have going east or west; I have directly in our area. I think not to include the area I've mentioned is wrong or, alternatively to that, not to include some other direction that addresses those fringe areas is wrong. If you look at the Oak Ridges moraine legislation, and you look at the effect that it has had on our communities right through here and now, the escalation in housing prices and the demand that has been placed on the existing urban areas—all of those types of things which are happening—it's tremendous.

**Ms Churley:** I understand that there's a great deal of opposition to this development in the community. If this is not included under the greenbelt right now, how do you see stopping it, other than through this method? It's already proceeded fairly far, has it not?

**Mr Taylor:** Well, submissions have been made. I have a copy of their submission and what they're proposing. But I think that the ministry itself should be commenting on it as an official plan amendment. I know that I'm asking York region to comment on it.

**Ms Churley:** They haven't as yet?

**Mr Taylor:** I don't believe so, no. But I have asked them to do so.

**Ms Churley:** Do you have any indication that they'll be doing so, both the province and York region?

**Mr Taylor:** No, I don't.

**Ms Churley:** What would be the next step, then? I take it that having it included in the greenbelt right now would be key, in terms of where things are at.

**Mr Taylor:** Well, I think it makes sense, when you look at the geography. You're on the east, the west and the south. Why not take that strip right across? When you look at what is proposed, I think it's more than doubly sensible.

**Ms Churley:** Right, it's huge.

**The Vice-Chair:** Thank you very much.

**Mr Delaney:** Mayor Taylor, thank you for coming. A very interesting presentation. I have one question for you, which I hope is not going to be lengthy.

Many of your peers in the towns and cities in York, Halton, Peel and the Niagara region have talked about the issues that you raised here, and they've talked about solutions similar to what you've suggested. Planners say—and they pretty much all say—that planned commercial and residential densification is necessary to build the ring of cities that you talked about.

I'd like to ask you, how are you coping with the “not in my backyard”—or NIMBY—syndrome when you try to plan commercial or residential concentration, either here in your town or in York region in general?

**Mr Taylor:** Good question. The NIMBY syndrome is always going to be there. I'll give you an example. Mr Wong, who's very familiar with myself and our area—we were proposing a multiple-density affordable development on an open piece of land in our municipality. The uproar we got was unbelievable. It wasn't a matter so much of density, it was a matter of “those people.” I'm not sure you can divorce the two situations.

We have not experienced the same as what they're experiencing in Markham or the south end of the region—Richmond Hill or Vaughan—in terms of the intensification theory. The first public meeting's being held next week dealing with that issue in the south end.

I've asked the region to have a meeting in the north end as well, because it affects Newmarket and Aurora. It affects that “T” which is being created in York region.

I don't think I'm answering your question, in terms of how you deal with the NIMBY attitude. I've lived all my life in Newmarket. If I were to have adopted the same thing, we'd be a municipality of 4,000 people. A lot of it is, “Well, I'm here now. I'm fine. To heck with you, Mac. I don't want you here.”

Public education probably is the best way of doing it. Unless we start to intensify our populations within our existing urban areas, we're going to have problems meeting our financial viability going forward.

**Mr Delaney:** Thank you.

**The Vice-Chair:** I have one question. What's the population of Newmarket?

**Mr Taylor:** About 75,000.

**The Vice-Chair:** Next, we go to the opposition side.

**Ms Laurie Scott (Haliburton-Victoria-Brock):** Thank you very much for your presentation today. When you referred to working with Smart Growth—I don't have knowledge of Smart Growth for your area, but do you know much about the Smart Growth that was planned, the studies that were done and what positive effects they might be able to build into the greenbelt act?

**Mr Taylor:** No, what I was referring to were the recommendations of intensification which came out of Smart Growth. That's what I was referring to in my comment. I'm not familiar, to any great extent, beyond that.

**Ms Scott:** I think, in the interests of time, that's fine.

**The Vice-Chair:** I think that's it. Thank you very much, Mayor.

**Mr Taylor:** This is easier than council.

**The Vice-Chair:** There you go.

1320

## TOWN OF WHITCHURCH-STOUFFVILLE

**The Vice-Chair:** The next presentation will be from the town of Whitchurch-Stouffville, and it's Mayor Sue Sherban. Good afternoon, Mayor.

**Ms Sue Sherban:** Thank you, Chair and panel. I appreciate the opportunity and the time, and for coming here locally to York region to give a personal deputation as to how we feel and what we face.

First, I'd just like to give you a bit of history about the municipality and then speak to some of the concerns that are facing us as a municipality that has an 80% freeze for the Oak Ridges moraine.

The town of Whitchurch-Stouffville is an urban/rural community of approximately 24,000 persons situated in central York region. You'll have a couple of maps there that will give you an idea as to where we are located, as well as how the moraine affects Whitchurch-Stouffville. Given our locational presence in the GTA, we are afforded GO Transit rail and bus services and there are five interchanges on to the Highway 404 corridor. The town is situated approximately 20 minutes northeast of Toronto.

These locational attributes, however, are all counter-balanced with key environmental factors which sometimes are in conflict with our close proximity to Toronto, such as the dominance of prime agricultural soils in the southern, northwest and northeast quadrants of the municipality. Eighty per cent of the municipality is situated on the Oak Ridges moraine and 27% of the land area is under forest cover. Truly, the town of Whitchurch-Stouffville is "Country Close to the City."

In recognition of the urban pressures that are influencing the town, the municipality in 1999-2000 embarked upon a comprehensive land use program. The first component was a town-wide assessment of a natural features and greenlands study. The initiatives identified and coded all warm-water and cold-water rivers, fish habitats, forest and woodlands, areas of natural significance, wetlands and bogs, recharge and discharge areas, wildlife, wildlife corridors, kettle lakes, and landform conservation and erosion-susceptible areas.

With an environment-first perspective, the town then moved into the second element of the comprehensive review, which assessed the following matters which formed the basis of an opportunities/constraint matrix:

- demographic forecasts for residential and non-residential growth for a 20-year time period, and this analysis was completed in the context of our role within the region and the GTA;

- preparation of a growth management strategy;
- transportation and servicing review;
- prime agricultural land appraisal; and
- aggregate resource appraisal.

With a true understanding of all the relevant factors which influence land use planning decisions, the town finally embarked upon the preparation of a new official plan. As a result of the analysis, the town created a comprehensive policy framework in the official plan, prohibited residential development outside of approved settlement areas and created a strategy to protect for the longer term the environmental attributes of the Oak Ridges moraine.

I would like you to take strong note of this: The strategy was adopted by council in the form of a new official plan on September 5, 2000—a full 18 months before the province created the Oak Ridges Moraine Conservation Act, 2001—implementing the Oak Ridges

moraine conservation plan. Why I point this out to you is that if you leave the tools in the hands of the municipalities that are sitting on the moraine or on the green space, we will be and are responsible. We do not need further legislation to tell us, but just give us the tools to be able to preserve and sustain our own rural communities.

This overview has been provided because the town wishes to identify and confirm that proper planning and technical assessment are being completed at the local municipal government level. This technical assessment is being taken in consultation with our ratepayers so that the decisions made by local councils are truly reflective of the desires and objectives of our community.

A piece of sweeping provincial legislation such as the Greenbelt Protection Act cannot properly account for the local initiatives and priorities. In lieu of providing a sweeping urban boundary for the Golden Horseshoe, alternative mechanisms are available which can protect our open space systems and prime agricultural lands while still empowering local governments in making land use decisions which reflect the desires and will of their ratepayers. I believe you are looking for ways you can possibly do this without putting in sweeping legislation on the greenbelt. The alternative mechanisms include:

(a) The provincial government, with the tabling of Bill 26, an amendment to the Planning Act, has proposed that no individual or corporation could appeal a decision of council to prevent the expansion of the urban settlement area boundary, or alternatively, council's failure to make a decision within a prescribed period of time. This amendment to the Planning Act returns the control back to the duly elected council—the municipal level—to render decisions on establishing urban boundaries based upon community objectives and comprehensive growth management strategies. The government needs to implement this component of Bill 26 now.

(b) The provincial government, with the tabling of Bill 26, has also proposed to revise section 3 of the Planning Act by stating that all decisions rendered with respect to a land use planning decision "shall be consistent with," instead of the current "shall have regard for," the provincial policy statement. This subtle change to section 3 of the act establishes more weight and credibility to the provincial policy statement and establishes a higher level of compliance with key environmental, agricultural, and community building objectives. Again, the government needs to implement this component of Bill 26 now.

(c) The provincial government needs to reassert itself in region-wide community building. People, goods and services do not recognize municipal boundaries. The province, in consultation with the cities of Toronto and Hamilton and the upper-tier municipalities within the Golden Horseshoe, needs to undertake a more comprehensive analysis of population modelling and demographic forecasts for a 20- to 25-year time period, with a mandatory five-year reassessment and update. These figures should then be included in the upper-tier official



plans, which then confirm the rationale for the urban boundary.

(d) As a component of the aforementioned population modelling, a firm target of future growth which will be accommodated within established neighbourhoods through redevelopment and intensification should be enshrined within upper-tier official plans. These targets would limit the expansion of the urban boundary, thereby protecting prime agricultural areas for the longer term. The carrot to ensure that these objectives are fulfilled is stable provincial funding in terms of road and transit improvements and infrastructure renewal with respect to water supply and sanitary sewer collection systems. If a municipality does not, over the prescribed period of time, achieve the targets to curb urban expansion, the assigned provincial funding model is reduced.

(e) Introduce an economic platform for the farming community which provides the incentive for the agricultural producers within the Golden Horseshoe to continue to raise animals or grow crops. The best way to save farmland is to have a legitimate agricultural producer using the land and earning a fair, representative income.

The specific fear that exists with the establishment of a firm urban boundary is that it is an arbitrary line. As an urban-rural community, we could be placed outside the urban boundary and, as a result, our assessment base could be flatlined. Because municipalities are so reliant on the property tax base to raise our revenues to fund local programs and services, we could be faced with spiralling tax increases.

1330

If the government moves forward with the establishment of a firm urban boundary and creates a permanent greenbelt and open space system, the following matters must be considered to ensure our continued financial viability:

(a) The municipalities within the urban boundary would have to pool tax dollars and transfer funds back to the rural municipalities. This process, albeit in reverse, is already present in the GTA, where the regions pool funds that are transferred to Toronto for social housing and welfare programs. If we in the rural areas are to be forever green for the benefit of the urban population to the south, they should financially reward the outlying rural municipalities.

(b) Do not eliminate locally based economic development initiatives such as ecotourism, agricultural ventures and associated industries, wellness centres and retreats, and home-based or small-scale commercial ventures.

(c) The population models and the extent of the greenbelt has to extend a minimum of one and a half hours of commute time outside the boundaries of Toronto. Failure to do this will result in a leapfrog over the Golden Horseshoe greenbelt into the surrounding districts of west Northumberland county, the city of Kawartha Lakes, Simcoe county, Brant county etc. This leapfrog effect would significantly undermine the intent of the greenbelt and would exaggerate the extension and

upgrades to the highway system and to commuter patterns.

In closing, we do not need the Greenbelt Protection Act or additional legislation arising from this to further regulate the land use planning process. Initiatives already underway with respect to amendments to the Planning Act, if implemented, will substantially raise the bar toward protecting for the longer term our prime agricultural areas and open space systems.

The government has to be more proactive in region-wide planning, and the government has to create a fair and sustainable funding model to protect and maintain our infrastructure. In combination, these tools will assist in directing growth and ensuring the preservation of our cherished resources. Thank you.

**The Vice-Chair:** Thank you. We have about three minutes each. We'll begin with the government side.

**Mrs Van Bommel:** In part of your presentation, you talk about introducing an economic platform for the farming community. Are you talking about economic incentives for farmers strictly within the Golden Horseshoe and greenbelt study area, or are you talking about province-wide? And how would you reconcile that with agreements and restrictions we have under NAFTA, WTO and GATT?

**Ms Sherban:** I believe you could do it province-wide. But I also believe that in the greenbelt area, there are areas that are not of significance that would be wide-sweeping, and therefore you restrict the areas from being able to gain the economic revenue. So to be fair and give it just to those in the greenbelt area—you're asking them to preserve their agricultural lands, and in the meantime you're not giving them any opportunity for continued revenue. Outside that area, you would be giving farmers the opportunity because of their ability to sell their land for future uses, whereas in the greenbelt area they wouldn't have that opportunity.

**Mrs Van Bommel:** I am a farmer. In my area, I'll never sell it to anybody but another farmer.

**Ms Sherban:** I applaud your integrity, but that is not always the case.

**Mrs Van Bommel:** It's just that the opportunity is not there. It's got nothing to do with integrity. It's simply a fact.

**Ms Sherban:** Well, if it is not there, then that is maybe not an option you have to think about. But in an area as close as our municipality is to the GTA, the opportunities have been there and have been there for a long time. Landowners have long since sold their land and have cash-cropped it, just knowing they would have the future retirement on that property.

It's not necessarily the same. I wish all farmers did feel that way, but unfortunately, they've worked X number of years on their farm, and in our area we're taking away their retirement.

**Ms Scott:** I'd like to pick up on that point with the farming, maybe together with some property rights. You have the Oak Ridges moraine in your riding. Are there



any examples of people who own property within the Oak Ridges moraine and the value—is there anything?

**Ms Sherban:** Who are not farming, or those who own property on the Oak Ridges moraine and are farming?

**Ms Scott:** I used farming, but it could be another example, just of something they have property rights with. What's the value to their property? Are they restricted presently in the Oak Ridges moraine, say, from severing off a lot from the farm?

**Ms Sherban:** Yes.

**Ms Scott:** OK, so there are restrictions now.

**Ms Sherban:** Absolutely. Being on the Oak Ridges moraine, the resale value, compared to what it was a mere two or three years ago—that farmer would have been able, if they so chose, and I'm not saying all farmers do, to sell it for uses other than farm. We saw an escalating sale per acreage from \$75,000 to \$125,000. That's because they knew they were in an area of a secondary plan, which would allow them to have future development on those properties.

**Ms Scott:** And you can see that coming with the greenbelt legislation. Have you seen prices also escalate so far for lots in the city?

**Ms Sherban:** Well, you won't see them escalate for land use. You're seeing the reverse, where they're losing, because unless there is a farmer who wants to buy it—

**Ms Scott:** Exactly.

**Ms Sherban:** Unfortunately, you don't have a great demand out there for the purchase of farmland. We find it's really passed down through families who have farmed for years, so it's then the next generation. We have a lot of third- or fourth-generation farmers in our area who think maybe their children won't take that on, so therefore they're looking for somebody to purchase so they can retire. We know what a farmer's income is, and they're going to be restricted.

Our municipality totally concurs with the support of agricultural land and green space, but we have been given, with the Oak Ridges moraine and now the greenbelt, no tools. If they had provided them—we saw this with the Niagara Escarpment, where it became ecotourism, and that's how they became sustainable as far as preserving that. With the Oak Ridges moraine act, you can't even do ecotourism. They can't even open another footprint on that property. And of course the greenbelt really just zeroes out. Where we currently have 80% and 27%, with the greenbelt it will probably become more like 9% and 10% that will be urban and the rest will be rural. It takes what the balance was, and the rest of the municipality went with it.

**Ms Churley:** Thank you very much for your presentation, Mayor. I don't necessarily agree with everything you said, but I sure agree with a lot of it. It was a very succinct sense you gave us of the frustration you're seeing in your area and areas all over.

The thing that keeps coming back, and you mentioned it as well, is infrastructure and the fact that municipalities pretty much rely on property tax assessments. We've heard from some that in fact part of the problem is that

there's a demand for development because they're not getting enough money to fund infrastructure as well as the new water regulations, the Nutrient Management Act, and now this. All these things are coming at you while you're also being told you can't develop, which is where you get your money to carry on.

I think what you're expressing is that frustration that you're in a Catch-22, and what do you do? I have to tell you, I support protecting the greenbelt and I'm as concerned as you are about the leapfrogging, but I also understand the frustration that mayors and councils in the smaller municipalities are facing. I believe that's what you're trying to tell us today.

**Ms Sherban:** Absolutely. You've got to do one or the other. If you want us to be sustainable, give us some tools—don't put far-sweeping legislation in—so we can maintain and preserve the green space for the betterment of the future of the country and the province. Or, in reverse, if you feel there is this need to put the hammer down, then give us the financial resources we need not to burden the local area residents who are there currently.

**Ms Churley:** If this goes ahead without the kinds of infrastructure dollars you're talking about for some of these things, what do you see happening in municipalities?

**Ms Sherban:** You're going to build exclusive communities. They're going to be shut out from anybody being able to afford to get in there to live. We're finding that already. Our housing prices in Stouffville—it's so sought after because of the type of community it is. I think you'll find that same thing for most of the rural areas, that the housing itself is very exclusive. Earlier, Mayor Taylor spoke about affordable housing. Well, nobody could afford to live there even if you put affordable housing in there, because you're creating communities that are going to be of a higher level. The people who live there are going to be the people who can afford it, because the tax base is going to be so high. Our last tax implementation was 8.9%—we started at 12%—and we see no relief because, as you see, we're at 80%. We have a very small amount of industrial lands for our size—we're 85 square miles, of which 80% is rural.

1340

#### COALITION ON THE NIAGARA ESCARPMENT

**The Vice-Chair:** Next we have the Coalition on the Niagara Escarpment, Mr Bradley Shaw. Good afternoon.

**Mr Bradley Shaw:** Thank you, Chair and members of the committee. My name is Bradley Shaw and I'm the executive director of the Coalition on the Niagara Escarpment, or CONE. With me is Linda Pim, conservation policy analyst for CONE.

CONE is a coalition of 31 province-wide environmental organizations as well as community-based groups along the Niagara Escarpment. Together, these 31 organizations represent tens of thousands of Ontarians.



CONE has worked consistently since our founding in 1978 for the protection of the escarpment and its many values to Ontario society. CONE took part in the hearings in the early 1980s leading to the passage of the original Niagara Escarpment plan in 1985, and in the first and second five-year reviews of the plan, in 1991-1994 and 1999-2001, respectively. We've also been a party at Niagara Escarpment plan amendment hearings, and we've appealed several Niagara Escarpment Commission development permits. In addition to monitoring land development within the Niagara Escarpment plan area, we also engage in educational programs to promote public awareness of and appreciation for the Niagara Escarpment.

CONE wishes to be on the record as supporting Bill 27. There's an urgent need to protect natural habitats and agricultural lands in the Golden Horseshoe, and Bill 27 sets out to fulfill that goal. What is needed is equivalent legislation to establish environment-first land use planning across southern Ontario that similarly requires the curbing of urban sprawl and, therefore, the protection of our woodlands, wetlands and farmlands. Bill 27 is an excellent start.

However, Bill 27 was tabled for first reading in the Legislature on December 16, 2003. As early as 22 December, CONE wrote to Premier Dalton McGuinty, expressing our concern that Bill 27, in schedule 2, exempts the Niagara Escarpment plan area from the interim urban boundary expansion moratorium that runs for one year until December 16, 2004. Since that time, we have had discussions and meetings about this issue with senior staff in the Premier's office, the office of the Minister of Municipal Affairs and Housing, and also the Minister of Natural Resources. We have also discussed the matter with senior staff at the Niagara Escarpment Commission, the provincial agency which implements the Niagara Escarpment plan.

It is clear to us, from the meetings and discussions noted above, that it was never intended by the government that the Niagara Escarpment plan area would be subject to a lower level of protection from urban expansion than would the rest of the lands in the greenbelt study area identified in schedule 1 of Bill 27.

Even though the Oak Ridges moraine area is also listed in schedule 2, there is not the same concern vis-à-vis the Oak Ridges moraine, because the Oak Ridges Moraine Conservation Act, with some very limited exceptions, allows for consideration of urban boundary expansion applications only at the time of the 10-year review of the plan.

By contrast, an application to the Niagara Escarpment Commission for a Niagara Escarpment plan amendment to expand an urban boundary in the Niagara Escarpment plan area—sorry, there's a lot of "Niagara Escarpments" in there—can be made by a developer or by a municipality at any time. While we cannot be sure of the reason, it appears that perhaps the government was not aware of this fact when Bill 27 was drafted, for even as we speak to you today there are four active applications for urban

boundary expansions within the Niagara Escarpment plan area that are not stayed by the ministerial zoning order currently in place under the Planning Act for the greenbelt study area and would not be stayed by Bill 27, as now drafted.

Evidently, the government did not know or did not intend the ironic situation we find ourselves in, in which the area of the Niagara Escarpment plan, Canada's first large-scale, environmentally based land use plan—an area designated a world biosphere reserve by UNESCO in 1990—is less protected from urban expansions during this one-year moratorium than is the rest of the greenbelt study area.

For your information, two of the proposed urban boundary expansions are small in scale. One is at the edge of the village of Campden in the town of Lincoln, regional municipality of Niagara. The other is at the edge of the village of Winona in the city of Hamilton.

However, the other two proposed urban expansions are large. One is an application by Central Milton Holdings Ltd for a 500-unit subdivision in the town of Milton, regional municipality of Halton, an amendment that seeks to re-designate escarpment rural area lands into urban area under the Niagara Escarpment plan. This application is currently before a consolidated hearings board hearing, with an adjournment having been granted in April 2004 until November 2004 for reasons unrelated to Bill 27.

The other application is by Castle Glen Development Corp for what amounts to an instant town of some 7,000 or more people on the escarpment in the Town of the Blue Mountains, county of Grey. An Ontario Municipal Board hearing on this proposal is currently in progress. In a letter to the Minister of Municipal Affairs dated March 19, 2004, CONE and Environmental Defence Canada requested that the minister issue a zoning order under the Planning Act for the Castle Glen property that would likely have had the effect of allowing deferral of the OMB hearing. However, the minister chose not to issue such an order.

It is our understanding that the government may rectify the treatment of the Niagara Escarpment plan area through an amendment during clause-by-clause consideration of Bill 27 by this committee. We anxiously await the opportunity to examine such an amendment and provide our comments on it informally to members of this committee during clause-by-clause.

The Niagara Escarpment Commission itself has proposed to the minister a means by which Bill 27 could be amended to level the playing field for the Niagara Escarpment plan area. We have attached to our submission a letter dated March 20, 2004, from Mr Don Scott, chair of the NEC, in which he suggests that Bill 27 could be amended to allow for urban expansions on the escarpment only at the time of the 10-year review of the Niagara Escarpment plan, as is similarly provided for in the Oak Ridges Moraine Conservation Act.

CONE finds it ironic that the government is planning a Golden Horseshoe greenbelt without simultaneously put-



ting at least a temporary moratorium on the planning of new provincial highways or highway extensions in the greenbelt study area. Several of these highway projects, including the mid-peninsula highway, the northward extension of Highway 410 and a possible new GTA east-west highway, would run through parts of the Niagara Escarpment. It is expected that the entire Niagara Escarpment plan area will be made part of the long-term greenbelt. It is CONE's position that to truly contain urban sprawl and protect natural habitats and farmlands, there should be a province-wide transportation master plan in place before any further planning is undertaken for new highways.

Bill 27 should therefore be amended to place a moratorium on planning these and other proposed highways in the Golden Horseshoe, at least while the greenbelt is still being planned. No approvals under the Planning Act, the Environmental Assessment Act or other legislation should be permitted until the above-noted transportation master plan is completed. It is essential that urban planning, green space and farmland protection, and sustainable transportation be fully integrated within the greenbelt study area and beyond.

CONE does wish to state for the record that we are pleased that in its May 13, 2004, consultation paper, the Greenbelt Task Force has recommended that the entire Niagara Escarpment plan area be included in the greenbelt and that the escarpment continue to be protected through the provisions of the Niagara Escarpment plan.

In closing, CONE is very pleased with the thrust of Bill 27, since it shows that the government is placing a high priority on nature conservation, both on the Niagara Escarpment and beyond. We look forward to the committee's further deliberations on the bill, and we hope that during the creation of the greenbelt, the government will draw upon our organization's 25 years of experience with Niagara Escarpment protection.

**The Vice-Chair:** Thank you. We have about four minutes each. We'll start with the official opposition.

**Ms Scott:** Thank you very much for your presentation. I'm just covering for today, so I'm hearing a lot of this for the first time. I appreciated that report.

Right now, I've asked a bit about the property rights of the people within the Niagara Escarpment. The plans have been in place for a while—for the one example you used up in Grey-Bruce, is it, where you used the example of a community?

**Mr Shaw:** Of the property? Yes.

**Ms Scott:** Since you've been up and going, how have you been able to deal with people who own land now, and expansions? I know there was a Smart Growth study for the infrastructure for some of the transportation that was planned for the future. I don't know if you are familiar with the Smart Growth plans. Can you comment a little bit on property rights within the escarpment and the transportation plans. Smart Growth was, I think, the latest study that was done on hubs and some transportation. I know there are a couple of questions there.

**Mr Shaw:** Is the question further examples of properties or just in general how property rights are protected through the plan?

1350

**Ms Scott:** Yes, in general. We'll start with that. If land is being used now—I know the mayor commented before that it has to be sold as agricultural, not development, within the Niagara Escarpment plan. Is that correct?

**Mr Shaw:** The Niagara Escarpment plan provides a zoning framework over the plan area. There are particular designations, and those designations have generally a variety of uses within each. I'm not sure changing those designations has been done on a grand scale over the course of the plan for the last 25 years. So there is some flexibility within a designation, but when purchasing the land or whatever, you're purchasing it with the understanding that that designation is in place and there shouldn't be any expectation that that will change in any broad way without going through the process of going to the Niagara Escarpment Commission.

**Ms Scott:** The Niagara Escarpment Commission works with the municipalities, or is it just totally stand-alone?

**Mr Shaw:** There are representatives from the municipalities that cover the Niagara Escarpment, as well as members at large who are appointed from the public by the government—I believe by cabinet.

**Ms Linda Pim:** Just to add to that, the Niagara Escarpment Commission makes all the decisions about land use in the escarpment, so there are the municipal members on the commission, but it is a provincial agency.

**Ms Scott:** So it does have the last say.

**Ms Pim:** Also, to expand on the land use designations, a landowner can seek an amendment to the Niagara Escarpment plan if they feel their land ought to have a different—there are seven land use designations in the plan. Often they want a less restrictive land use designation and they can seek an amendment, which may or may not be approved by the minister or by cabinet.

**Ms Scott:** By the Niagara Escarpment Commission, did you say?

**Ms Pim:** No, it's a decision of either the Minister of Natural Resources or cabinet, depending on the amendment.

**Ms Scott:** OK, thank you.

**Ms Pim:** If I could just add that early on in the Niagara Escarpment experience there were a lot of arguments raised around property rights. The Niagara Escarpment protection program began in 1973 with the passage of legislation. We are now 30-plus years later and it has broad public support. We don't find nearly as much negative reaction to it as we did 30 years ago. It has become a world biosphere reserve. It has become accepted. Property values are actually higher—and we've done the research to show it—on the escarpment, because that's where people want to live.



**Ms Churley:** Thank you for your presentation. As always, it was succinct and very clear as to what you want to see happen. I think you're probably right in that the Liberals, from what I'm hearing as well, will bring forth an amendment to rectify the Niagara Escarpment being left out. I'm sure if they don't do it, I will. We both will, I'm sure. I don't know about the Conservative Party.

I wanted to ask a specific question related to that. I, too, as you know, have been concerned about the proposed new Castle Glen development. I've raised the question a couple of times in the Legislature and in statements and things. For your benefit, if you're not aware of this, this is the new town that is going to be the first permanent, year-round town built on the escarpment. It is too complicated a case to describe quickly here—a very complicated situation—but the minister could have done something about it and chose not to. So my question is, should the escarpment plan come under the new greenbelt? Could that, in effect, stop it in its tracks now that it's before the OMB, or does this mean it's a done deal no matter what happens with the Niagara Escarpment and the greenbelt? Are you clear on what I'm saying?

**Ms Pim:** Yes. I actually testified before the OMB hearing on Castle Glen on CONE's behalf earlier this week. The answer is no, I don't think Bill 27 would stop Castle Glen from proceeding, except if the Niagara Escarpment plan area is included once the freeze is over. Section 11 gives the minister the power, if he wishes, to defer or to stay anything that is before the Ontario Municipal Board. I'm not a lawyer, but my reading of the bill is that, technically, the minister could go in and stay that hearing. I'm not sure that's a good or bad idea. There may be several ways of actually resolving the matter of Castle Glen, including some discussion of land acquisition by a number of parties from the landowner-developer in a manner that is fair to the landowner. So there are a number of options. As you say, that's a very complex one.

**Mr Delaney:** You have an excellent brief, with a remarkable degree of internal consistency, so my compliments to you on your research and preparation.

I'd like to ask you a question that I asked of Mayor Taylor: your viewpoint on commercial and residential concentration. What measures in your opinion might the towns and cities bordering on the study area take to lead public opinion into accepting commercial and residential concentration and overcoming the NIMBY effect?

**Mr Shaw:** I think one of the keys is—I don't mean to be unduly critical—that many of the municipalities we deal with could expand their role of community consultation and involvement from the beginning in any kind of planning exercise. I think having a much more open process from the beginning can go a long way, because people can take ownership of "OK, we're going to have expansion in this area," or whatever, but in that plan they can say how that is going to develop, the broader framework around that.

**Mr Delaney:** In other words, lead people into making the decision themselves?

**Mr Shaw:** Exactly. I don't know if Linda has something to add. OK.

**The Vice-Chair:** Thank you very much for your presentation this afternoon.

#### WEST DUFFINS LANDOWNERS GROUP

**The Vice-Chair:** The next presentation is from the West Duffins Landowners Group, Mr Mark Flowers. Actually, we're running a bit early.

**Mr Mark Flowers:** I have a map that I would like to hand out. I have several copies.

Good afternoon, Mr Chairman and members of the committee. My name is Mark Flowers and I'm a solicitor. I'm pleased to speak today on behalf of the West Duffins Landowners Group. The landowners group is a group of landowners in an area of the city of Pickering known as the West Duffins lands. You'll see on the map I've just had circulated that the West Duffins area is identified in a purple colour at the bottom right of the map. It's located immediately north of the existing built-up area of the city of Pickering. It's west of the provincially owned lands of Seaton, separated by the West Duffins Creek. It's south of the federally owned airport lands, and to the west is Rouge Park and the city of Toronto, and of course north of that the town of Markham. Together, the landowners group owns roughly half of the West Duffins lands, and the West Duffins lands total about 2,000 hectares or 5,000 acres.

Rather than comment today on the specific sections of Bill 27, I'd like to spend most of my time speaking to you about the ongoing planning process that applies to the West Duffins lands and then I'd like to conclude by relating that process to Bill 27 and the objectives of Bill 27.

1400

As some of you may know, the city of Pickering initiated a growth management study back in 2002. They did so in order to identify future urban growth—sometimes people refer to it as north Pickering; in reality I guess it's central Pickering—recognizing the growth pressures that Pickering is facing now and certainly will face over the coming decades. As part of that growth management process, a study area was identified, and the study area roughly corresponds to the West Duffins lands in the west half and then the Seaton lands in the east half. There were some other lands, but predominantly it's the West Duffins lands and Seaton.

In 2002, city council approved terms of reference for the growth management study. They were assisted in that process by a working committee. The working group was composed of staff from the city of Pickering; other municipalities; public agencies and authorities, including the province of Ontario; landowners; community groups and other members of the public. They all worked together to form the terms of reference for the growth management study.



As part of the terms of reference for the study, a set of 10 guiding principles was developed. I don't propose today to go through each of those 10, given the short amount of time that I have to speak, but I did want to highlight the first three of those principles, because I would suggest they are consistent with the objectives of Bill 27.

The first principle that was identified for the growth management study was to maintain environmental integrity in the study area, and it would do so by identifying, protecting and enhancing a healthy ecological system, including the area's ecological features and functions, landscapes, habitats, surface and subsurface water, air and other resources.

The second guiding principle was to respect cultural heritage, and it would do so by protecting and integrating important cultural heritage attributes and resources from all time periods in the community, including significant First Nations sites and rural settlements.

The third principle was to foster a healthy countryside, and it would do so by encouraging a vibrant rural economy, including agriculture, recreational and open space uses, and conserving a resource base for current and future generations.

In order to carry out the city's growth management study, it retained a multidisciplinary team of consultants in early 2003 and they began phase 1 of the study. The study was intended to have three phases. The first phase would be basically a comprehensive environmental systems assessment which would involve a detailed inventory of both the natural and cultural heritage in the study area—effectively, that's an environment-first approach—and would identify right at the outset the constraints and the opportunities for development in the study area.

As part of phase 1, the consulting team also undertook an agricultural community assessment, and that was to identify opportunities, priorities, strategies and so forth for agriculture in the study area.

At the conclusion of phase 1, the study team then moved on to phase 2, and that was really designed to identify a recommended growth management plan and a structure plan for the study area, based on the detailed work they had done as part of the background work in phase 1. In other words, the study team's recommendations, as part of phase 2, would be based on the most current information available, taking into account, for instance, current thinking on agricultural practices and environmental systems protection. This area, particularly the Seaton lands, has been studied for a number of decades, but this is really the most current, up-to-date assessment that's been done.

The team then began by preparing five alternative growth management options, and they all had varying degrees of development being proposed in the West Duffins lands. There was one option in fact that proposed no urban development in the West Duffins lands, so that was looked at too.

I keep using the term "West Duffins lands." It has also been identified in the growth management study as the

Cherrywood community. Sometimes they distinguish between Seaton in the east and Cherrywood in the west.

Each of the five growth options was then presented to the public and to public agencies for comment. The study team also evaluated each of the alternatives against that set of 10 principles that had been developed by city council in the past. They came up with a preferred growth option that did include some development in West Duffins. Again, the preferred growth option was presented to the public and public agencies for review and comment. There was a series of public open houses held. There was a design charette held. From this, a slightly modified version of the earlier growth option was prepared and ultimately became what is referred to as the recommended structure plan.

The recommended plan proposes to accommodate within the study area a population of about 77,000 people in a series of compact, mixed use and transit- and pedestrian-friendly neighbourhoods. The plan also offers employment opportunities, and that's key for the city of Pickering. They identified that they really needed also a jobs-first strategy. They don't simply want to be a bedroom community for the city of Toronto and York region. The plan identified that there was opportunity for employment of about 33,000, and most of the employment lands would flank either side of Highway 407. Highway 407 essentially bisects the northern portion of the study area.

In its phase 2 report, which was released in February of this year, the study team concluded that projected growth over the next 20 years for the city could not be accommodated within the currently designated urban areas of the city of Pickering, and that includes the Seaton lands. That's even with a rather aggressive intensification strategy for the existing built-up area of Pickering.

They identified that growth opportunities outside the study area, still within the city of Pickering, were also very limited because of the federally owned airport lands and, of course, the noise contours and things of that nature. The southern boundary of the Oak Ridges moraine bisects the northern portion of Pickering. So there are a lot of development constraints in the city of Pickering outside the study area.

Therefore, the study team recommended urban development for roughly half of the West Duffins lands—basically the southern half—and then designated the remainder as countryside. The study team also evaluated the recommended structure plan against the provincial policy statement and concluded that it was consistent with the PPS, particularly with respect to the location of growth, protection of natural resources, cost-efficient use of infrastructure—because there is existing infrastructure in the West Duffins lands and it's also very proximate to the existing infrastructure immediately south of that in the existing built-up portion of Pickering.

With respect to the protection of agricultural lands, the study team concluded that it wouldn't be possible to avoid any prime agricultural lands if you're going to do



any urban expansion in the city of Pickering. By comparison to other areas of both Durham region and in the GTA as a whole, the West Duffins lands, it was concluded, have a low agricultural priority.

In March of this year, Pickering city council endorsed the phase 2 report for public consultation, and a number of responses have been received by the city from a wide array of stakeholders: other municipalities, the Toronto Region Conservation Authority, Durham region, and so forth, as well as residents and landowners and other stakeholders.

The West Duffins Landowners Group was one of the groups that did comment on the recommended structure plan. Admittedly, the group didn't fully embrace absolutely every aspect of the study team's report and conclusions. For instance, the group is quite concerned that both the residential and employment lands requirements have been understated. The group has also questioned the need and the viability of the extent of the countryside area that is proposed in the northern half of the West Duffins lands. Nonetheless, the group has expressed its general support for the conclusions and the recommendations of the growth management study to date.

Likewise, in a report that was released last week, the city of Pickering staff have expressed their support for the conclusions of the study. They're recommending to city council that the recommended structure plan be endorsed as the basis for establishing a new urban boundary for the city of Pickering—and land use designations, of course. That report will be considered by the city's executive committee next week and then on to city council a week or two after that.

So as you can see, the city of Pickering's growth management study, which is now approximately two years old, represents a multifaceted investigation and assessment of the study area's opportunities and potential for development, and the city's need to accommodate its forecast population growth. It has also been subject to extensive consultation with government agencies, members of the public and other stakeholders, all in a very open and transparent form.

In essence, whether or not you agree ultimately with the recommendations of the study team, I think that most people who have been involved in this process would agree that this is how land use planning is meant to be done in the province. What I mean by that is planning at the local level, with real and meaningful input from those who are most affected by the decisions.

**1410**

We had thought that this was also the present government's attitude with respect to land use planning, reflected in its campaign platform, but also more recently in Minister Gerretsen's comments to the Legislature in December when he introduced Bill 26. He had commented at that time: "Local people, local governments should decide what happens to their communities," that government should "work for the people" by making land use planning "more open and transparent," and that government should "ensure that the will of the people ...

as expressed through their local councils, is respected when we plan for the growth of strong and healthy communities." Those were comments he made to the Legislature.

The landowners group's concern here is that in its current form, Bill 27, as it applies to the West Duffins lands, would be at odds with the objectives of doing planning at the local level rather than from Queen's Park. It's also at odds with empowering communities to shape their own destinies.

If the government is intent on carrying through with the greenbelt study with a view to establishing ultimately a Golden Horseshoe greenbelt, so be it. But for many of the reasons I've identified, including, for instance, its low agricultural priority; the growth pressures that are already faced in the city of Pickering; the location of the lands immediately adjacent to the existing built-up area of the city of Pickering; the existing infrastructure that's already in place; and the existing adjacent valley lands, reflected on the map that shows the linkages that already exist—the Oak Ridges moraine to the north and Lake Ontario to the south—obviously, that's an important objective in terms of maintaining linkages. You have West Duffins Creek immediately to the east which provides the valley land linkage, and to the west you have Rouge Park and then the Little Rouge Creek extending up to the Oak Ridges moraine.

In other words, the West Duffins lands are not needed to establish any linkage between Oak Ridges moraine and Lake Ontario. Therefore, the landowners' group is of the view that the West Duffins lands ought not be included in any greenbelt, and will be making a presentation to the Greenbelt Task Force when it meets in Oshawa next Tuesday, suggesting that the West Duffins lands be excluded from any greenbelt on the basis of, among other things, its physical characteristics. By that I mean in terms of its low agricultural priority and location with respect to other development and things of that nature.

Our recommendation to this committee is that the West Duffins lands should be excluded from the proposed greenbelt study area, not simply because of their physical attributes, because, as I say, that's a matter that will be addressed to the Greenbelt Task Force, but rather they should be excluded to recognize how far the city of Pickering's growth management study has advanced to date and to value the extensive public consultation process that has gone on; to recognize that the city of Pickering is quite capable on its own of planning with the objectives of environmental protection, smart growth and sustainable development; and finally, for the government to demonstrate that it truly believes that local people and local government should be determining the fate of their own communities.

I thank you for the opportunity to address the committee this afternoon, and at this time I'd be happy to take any questions from the members.

**The Vice-Chair:** Thank you very much. Ms Churley? We have about two minutes each, so it'll have to be really quick.



**Ms Churley:** OK. Thank you, Mr Flowers. Welcome. You're listed as a spokesperson for the West Duffins Landowners Group. In what capacity are you with the group?

**Mr Flowers:** I'm a solicitor who acts for one of the members of the landowners' group. I'm a solicitor with Davies Howe Partners. We act for one of the landowners, but I've been authorized to speak on behalf of the group today.

**Ms Churley:** I ask that because that wasn't quite clear. We've actually already heard from two other lawyers from your firm on behalf of the same group in other locations. Is that just because they are representing individuals, or are you representing the same development firm? I'm just trying to figure out—

**Mr Flowers:** I think you're referring to Mr Davies and Mr Alati, who I believe spoke at an earlier session. My understanding is Mr Davies was speaking on behalf of the Bayview East Landowners Group in Richmond Hill, which is not affiliated with this group. Mr Alati, as I recall, was speaking on behalf of the Urban Development Institute.

**Ms Churley:** You said "an individual." Are you representing the development group? I just want to be clear as to whom you're representing here.

**Mr Flowers:** I'm speaking today on behalf of the West Duffins Landowners Group.

**Ms Churley:** OK. That's what I wanted to clarify; for the developers.

**Mr Flowers:** As I say, as solicitors. We're not counsel to the landowners group, we're counsel to one of the members of the landowners group.

**Ms Churley:** One of the members, OK. That's all I wanted to know. Thank you very much.

**The Vice-Chair:** Any questions from the government side?

**Mrs Van Bommel:** Thank you very much, Chair. I thank you for your presentation, but we have no questions.

**The Vice-Chair:** The opposition?

**Ms Scott:** I just want to thank you for your presentation also, and I firmly believe the municipality should have its freedom to plan its development, in coordination with Smart Growth, agriculture groups. I praise the town of Pickering for the study that they've done and the consultation with the public. Thank you for coming here today.

**The Vice-Chair:** Thank you, sir.

#### BAYVIEW EAST LANDOWNERS GROUP

**The Vice-Chair:** Next we have the Bayview East Landowners Group; Mr Andrew Madden.

**The Acting Chair (Mr Bob Delaney):** Mr Madden, welcome. As you've obviously gathered, if you've been here longer than a few minutes, you have 20 minutes for your presentation. You may choose to use all or part of it. Whatever part remains will be divided evenly among the

members of the three parties, who may chose to ask you a question.

**Mr Andrew Madden:** Thank you. A little longer drive from Brampton than I expected this afternoon, so I haven't been here that long.

**The Acting Chair:** I had an unexpectedly long drive from Mississauga, so I know where you're coming from, but please relax and go ahead.

**Mr Madden:** If the taxpayers realized that you were all working on the Friday afternoon of a long weekend, I wonder what they would think. I don't know whether they'd congratulate you or tell you, "I'm sorry."

I represent the Bayview East Landowners Group, but the reason I'm here is a little more than that. I've had the opportunity to be invited—in fact, recently; last summer—by Mr Colle, the parliamentary assistant to the Minister of Finance, and by Dr Terry Fowler to address organizations on Kyoto and urban sprawl. Again, this fall I've been asked to attend a conference on Kyoto and urban sprawl to talk about the impact of sprawl and growth on southern Ontario. I bring a developer's perspective, because I am a developer's representative as a project manager, though a lawyer only by education, not by profession. I basically manage development projects.

In my package that I've given to you, the last page is an article from the Toronto Star from a couple of years ago. I'm the only developer who had the support of a group called Save the Rouge Valley System, who supported the development of 500 acres in Scarborough. We went beyond the then-limits of environmental boundaries to support and enhance an environmental community.

The reason I'm before you today is that I now represent a group known as the Bayview East Landowners Group within the north Leslie secondary plan area, which has been caught in the greenbelt freeze.

I want to talk about the similarities in the role of developers and the environment. We're all aware today that residents are very upset everywhere about traffic, lack of schools, lack of transit serving their areas. I certainly see it in my community of Brampton. We're now a large, growing area. Roads haven't been kept up to the standards necessary for the number of new homes we're getting.

Ontario has been under growth pressure for decades. We are the most popular place to come. My father and my mother came here for a better way of life. All of our forefathers would have done so as well. I'm first generation. People come to Ontario for that reason. Because of that, I've always held the philosophy that we have a responsibility to house the people of the world who want to come to live here for a better way of life.

But people now are talking about urban sprawl. Urban sprawl is different than urban growth. Sprawl is unbalanced and unmanaged growth. Sprawl is when you don't have the appropriate facilities in place, the infrastructure, the social services. Sprawl is when you don't manage and plan properly.

Our system, quite frankly, is out of kilter. We're not managing growth properly any longer. The pressure's on



the municipality. The pressure's on the province. I'm an active member of Canada's largest health facility for health care linen, and I understand the pressures the health care industry is under. It's the same pressure everywhere.

The greenbelt legislation was introduced, I think, to help give the government a chance to catch its breath and look at a way to manage growth so that sprawl doesn't take over, to bring it back into the terms of growth. But when you cast a net so wide, you capture things you didn't mean to.

1420

The example I'm bringing to you today is my project in Richmond Hill known as North Leslie. Why shouldn't North Leslie be captured by the greenbelt legislation? Well, it doesn't represent sprawl, it represents a natural extension of urban growth. North Leslie is surrounded by existing development.

Just to give you a background—sorry, I have an aerial photograph, but there's nowhere to display it, but there is an aerial photograph on the second page of my presentation. North Leslie is bounded by Bayview Avenue on the west, Highway 404 on the east, Elgin Mills on the south and Nineteenth Avenue and the Oak Ridges moraine to the north. A small portion of our lands, about 100 acres, is within the Oak Ridges moraine planning district. That doesn't mean they are moraine lands—there's a difference there—but they are within the definition of the Oak Ridges moraine.

These lands were started in a development application by the town of Richmond Hill in the late 1990s. The landowners took it over under my direction in 2000. The applications have been with the city, the town and the region since 2000. We got caught up in the Oak Ridges moraine freeze; that delayed everything for a year. We're now caught up in the greenbelt; that's delaying us for potentially a year. But we're surrounded by development. Infrastructure that's been put in place for North Leslie is already there.

When you look at sprawl, sprawl is when you run a big pipe up to King City and you open up thousands of new acres for development. That is an extension of sprawl. Growth is when you bring a service to a new community and that doesn't allow for the leapfrogging of other developments in other areas. That's growth, and that's what North Leslie is.

North Leslie would not create an opportunity for further development. North Leslie does not require major new roads, major new services, in order to develop. In fact, in North Leslie, we have more than 40% of the 1,200 acres planned for protection of the environment. Right now there are major coldwater tributaries that are the headwaters of the Rouge River system. So basically, as the Oak Ridges moraine starts to fall down and the aquifer that everybody is familiar with in the Oak Ridges moraine—as those two features come together, you get the headwaters of the Rouge system. They appear in the North Leslie lands. Those tributaries must be protected. Those tributaries must be enhanced. Right now, they're

farmed to their edge. The only way to provide for the enhancement and restoration of those is through development, where you create massive corridors to protect those. Usually you have anywhere from 10- to 30-metre buffers beyond the valley corridors, so you're looking at 100 to 150 meters wide. Then you require the developers to plant those, get the green canopy in and restore it to coldwater fisheries. That's what North Leslie will accomplish. Ultimately the development of North Leslie will be a project that environmentalists and developers and government can look at and say, "That's how you do environmental planning." This is not urban sprawl.

So why are we caught in the greenbelt legislation? Because the definition is any lands that are not in an urban boundary. Part of North Leslie is in the urban boundary, but the majority of it is not, so we're caught by the legislation. So the first flaw in Bill 27 is the definition of the lands that are impacted. You cannot use urban boundary. Quite frankly, though these lands are before the Ontario Municipal Board right now, the town, the region, the conservation authority and the landowners are on record before the board supporting these lands in the urban boundary. There's no question about that. Why we're at the board has nothing to do with environmental land use in terms of the ultimate development. It's more a case of the extension of what the boundaries are going to be for the environment and the land use of Highway 404, where we think because so much is protected for the environment that it's more suitable for residential, the town still thinks it's suitable for employment. That's the real fight. Frankly, if these lands were exempted, I believe there would be an environmental settlement achieved, but one can't negotiate an environmental settlement when there's nothing to negotiate; you don't know what you've got.

The reason I'm here is to say I'm sure there are other people who are in this position, where their lands are not in an urban boundary but they do not represent urban sprawl, they represent natural urban growth. I think when this committee looks at Bill 27, it should reflect on that distinction and try to find lands and say, "No, we're not trying to bring Ontario to a halt. We're not saying no more growth for Ontario. We're saying well-balanced, well-managed growth for stopping sprawl." Thank you.

**The Acting Chair:** Thank you very much. We have approximately nine minutes for questions, beginning with Ms Van Bommel.

**Mrs Van Bommel:** Thank you very much for your presentation and for coming out on the Friday of a long weekend. There are no questions, thank you.

**Ms Scott:** Thank you for your presentation. It was excellent, and I have no questions, either.

**Ms Churley:** Well, you can imagine that I do.

**Mr Madden:** My pleasure.

**Ms Churley:** Mr Madden, you'll have to forgive me, but I don't understand some of your comments about the only way to protect the headwaters is to develop. I can't get into the technical discussion right now about that, but



I just wanted to let you know that at a later date I might need to find out more about that.

You mentioned that some of these—the region of York, the town of Richmond Hill, Toronto conservation authorities, Save the Rouge, Richmond Hill Naturalists and the Greenbelt Alliance—all opposed your development application before the OMB. You did say that the fight isn't over the project itself, it's more around the boundaries and not environmental concerns, when this site is listed as a really hot spot on the moraine for the headwaters and all these things. I really want to clarify with you: Are all of those groups that I just mentioned not concerned about the environmental impacts, but are more just concerned about the boundaries?

**Mr Madden:** No, I think your comment is correct. You left out one other party who is concerned about the environmental impact, and that's the landowners. We are all concerned about the environmental impact in that area. We are all looking to protect. There's no real dispute over protection of features. Every feature, with the exception of one intermittent tributary, has been agreed to be supported and maintained. What we're talking about now is the extent of enhancement. There is nothing that the OMB can do or nothing that current laws can do that requires the landowners to spend money to actually enhance and restore those tributary corridors. They're farmed right up to the edge of the creek right now. Whatever products that farmer is using in his growth process gets into that water. There is no control over that. What we are saying is, the only way you get the millions of dollars for the planting of trees to create the natural tributary system again is through the development process.

**Ms Churley:** But isn't that a problem in itself, that in order to protect these headwaters, the only way to do it within our system is to have fairly massive development there? I mean, honestly, how many residents of Ontario, including the local residents, do you actually believe support putting 6,000 new houses, a Home Depot and other things on the Oak Ridges moraine and the headwaters of the Rouge River?

**Mr Madden:** I don't believe any houses should be on the Oak Ridges moraine. There are not 6,000 homes planned for this area.

**Ms Churley:** How many are planned for the area?

**Mr Madden:** If 50% of this area would be developed, it would be about 3,500 homes.

**Ms Churley:** And what else would be on it?

**Mr Madden:** I understand there would be about six schools, two high schools, and there is one landowner, who I do not represent, at the corner of Leslie and Elgin Mills, who is proposing a medium- to mid- or big-sized box retail, but I don't have any details on that.

**Ms Churley:** I can get more details later. So was it from the 6,000 reduced to—

**Mr Madden:** The landowners agreed to expand the residential areas and increase the environmental areas, so we've changed our densities.

**Ms Churley:** So it's down now from 6,000.

**Mr Madden:** No, it never was 6,000. I don't know where that number came from.

**Ms Churley:** It never was 6,000?

**Mr Madden:** It was around 4,800.

**Ms Churley:** It was around 4,800. OK.

**Mr Madden:** And it would be lower than that if the town gets the employment uses east of Leslie. That assumes that all of the land goes residential.

**Ms Churley:** Is it before the OMB right now?

**Mr Madden:** It's currently stayed as a result of the legislation.

**Ms Churley:** Oh, that's right, of course. So it was going to be before the OMB and then it was stayed.

**Mr Madden:** I'm attempting to negotiate. I have meetings with Mr De Baeremaeker and Save the Rouge organized. I'm attempting to negotiate environmental settlements.

**Ms Churley:** With Glenn?

**Mr Madden:** Well, Glenn and I did it in Scarborough. That's what the newspaper article at the back of my package is about. Believe it or not, Glenn and I have actually been panellists together. We both have the same goals. Glenn is not anti-development. Glenn is not "stop development at all costs." Glenn is "protect my environment and if you can prove you're going to protect my environment, I will support development." I agree. That's exactly the approach developers have to take.

It's sad. We're getting incredible amounts of development. We're not getting nicer neighbourhoods. We're not getting better communities. There's something wrong.

**Ms Churley:** I guess we have to stop this exchange now, do we? I had more questions, but there's no time. Thank you.

**Mr Madden:** If you would like a card, I'd be delighted to speak with you further.

**Ms Churley:** Thank you very much.

**The Vice-Chair:** Thank you, sir.

The next group on the agenda is the Markham Environmental Alliance. They're not here, so we'll go to the next one.

*Interjection.*

**The Vice-Chair:** We're running a bit early, so we'll take a five-minute recess.

*The committee recessed from 1430 to 1444.*

## YORK REGION FEDERATION OF AGRICULTURE

**The Vice-Chair:** Can everyone take their seats, please? The next presentation is from the York Region Federation of Agriculture, Mr Terry O'Connor, president. Good afternoon, Mr O'Connor. Thank you for being early.

**Dr Terry O'Connor:** It's Dr O'Connor.

**The Vice-Chair:** Dr O'Connor. You may begin.

**Dr O'Connor:** Thank you very much. I appreciate the opportunity to speak to you today and would like to let you know that we're very concerned in agriculture about the issue around the greenbelt legislation.



Agriculture is a strong economic engine in York, with gross farm receipts of over \$175 million, but it is under tremendous pressure for urban expansion and urban-type uses with the related infrastructure which encroaches on agricultural uses. If agriculture is to survive in York, we must create environments where food production can operate profitably and provide incentives for long-term economic sustainability with the next generation's succession to the farm. Basically, farming must be economical. So I'd like to make the following points, and they're in my release to you.

Farmers are the major landowners in the GTA. This regulation could impact on their operations in many ways. For example, restrictions on enlarging buildings, which we're already seeing with the Oak Ridges moraine regulations, or restrictions on farm practices would impact on an owner's ability to finance the operation and interfere with long-range planning and retirement. I have to tell you that the people whom I talk to are quite concerned about their equity in their property and, if you like, their retirement situation.

Farming changes constantly, and we need to be able to expand and modernize. For example, a dairy farmer probably modernizes his operation every 15 to 20 years. So we need that ability to take innovative and new techniques and things like that when we're into long-range planning.

The other thing that needs to be allowed to happen is that we can get involved in novel activities such as nutraceuticals and any new type of farming that comes along. So we don't need any restrictions on being allowed to do that.

The preservation of the economic viability of food producers is a prerequisite to the success of the protection of the greenbelt. The overall plan must include programs that will encourage farmers within the greenbelt to continue farming. I think the average age is something like 51 or 54. We need to have some incentive there to get the young guys and gals to take over the farming operation. So we must prevent the further loss of farmers with the resultant need to import more food too.

The greenbelt would be a significant benefit to society, and we're concerned that changes could have severe economic impacts on agriculture. Farmers already face opposition to what are considered normal farming practices, and the Farming and Food Production Protection Act must be enhanced and enforced. There isn't a meeting that I go to where the farmers don't complain about people moving out to the country and demanding that they quit spreading manure on certain days and things like that, and the noise of corn drying during the seasons and things like that. So we have to have that requirement. That Farming and Food Production Protection Act must be enhanced. A clearly defined resolution process should be established. Right now, we just go and shout at each other. We need to have something that's a little more concrete like that.

Agriculture also contributes significantly to the environment in water quality, carbon sinks, energy production, ethanol and bio-diesel and, for example, woodlots.

#### 1450

Food security is important. Food should be produced here in this area. We've got a tremendous market to the south. The environmental impact of bringing food long distances isn't any good for the environment either, so we think we should be assisted in producing food here on a local basis.

We are concerned that as society gains control over the designated areas, farmers will be under increased pressure. This happens every day with people with the four-by-fours roaring around. We've had a lot of abandoned railways in Ontario, not so much in this area but in the GTA, and they certainly do a lot of damage to the agricultural community when they are allowed to do that. There should be a clear definition between "agricultural land" and "natural heritage," "water resources," "land forms" and "wildlife habitat."

For example, the wildlife damage in Ontario, we estimate, is over \$50 million. That's what we pay to feed the wildlife in Ontario. There is a study done by the Soil and Crop Improvement Association—in 1997, I think it was. It was \$41 million then. We're sure it's a lot more now. Again, this is an issue with farmers. As you develop more green lands and things like that, we think these populations need to be controlled. The Federation of Agriculture provincially has a new proposal out to try to manage this wildlife. I was talking to an individual the other day. In the fall he did his last field of corn over in the Utica area and he said he couldn't count the deer because there were so many there. They were having a feast before the winter and before he got it off the field. It happens every day.

Provisions must be made to prevent development from leapfrogging the greenbelt area and forcing commuters to travel long distances. Of course, the infrastructure that's needed to bring them through this area would be difficult. We must be co-operative. I think the agricultural community is prepared to be co-operative with any of the other interest groups. I was talking to the regional chair the other day and he said, "You know, agriculture isn't on the radar screen." It's important that we get agriculture on the radar screen so that people understand and know what we do in agriculture. I don't think many people understand what the day-to-day operation of a farm is.

With the desire of agriculture to make this concept work for all of society, we strongly advise investigating different methods of society owning, leasing, joint ownership, optioning and other ways of establishing this resource, as has been done in other areas.

One of the most important things for us—because of the importance of the agricultural industry and the impact this legislation could have on it—is that a permanent independent committee should be struck to better represent agriculture. This should include all commodities. For example, in this area we have a wonderful facility here in

Holland Marsh and certainly they should be well represented on any committees. We think all commodities should be represented. Thank you, and I'm prepared to answer some questions.

**The Vice-Chair:** Thank you very much. We have 12 minutes remaining. That's four minutes for each side, so we'll start with the official opposition.

**Ms Scott:** Thank you very much for coming here today and for your presentation. My riding of Haliburton-Victoria-Brock is certainly a large agriculture area too. We have very similar concerns. I wanted to pass on that Julia Munro wasn't able to be here this afternoon, but I wanted to pass her regrets on to you.

I understand there is also a report on the Ontario Federation of Agriculture that was done. I think it was Bryan Tuckey who did it.

**Dr O'Connor:** Bryan Tuckey works for the region of York.

**Ms Scott:** Yes. I guess in the GTA, economically, agriculture—is it \$2.3 billion? I just wanted to bring up that point. It's large.

**Dr O'Connor:** Yes.

**Ms Scott:** I note you'd said that it was over \$175 million. I agree with a lot of what you've said, that you just can't have the Greenbelt Protection Act; you have to work with the farming groups. Certainly, the farmers have always been good stewards of the lands, but we have to give them the tools to implement with.

I really just wanted to enforce that and bring it up again, if you wanted to add anything more about the agricultural—if you've been able to have enough input in the greenbelt, anything in the past to work with, any of the legislation that's come around. I know Smart Growth had done some studies in the past.

**Dr O'Connor:** Yes. The four federations in the GTA have been working together on a task force on the GTA, which I think is mentioned in the greenbelt study. So we've been working on that, and we will come out with something firm on that in the next two or three months.

**Ms Scott:** I look forward to reading that. Thank you very much for being here to represent the agricultural community.

**Ms Churley:** Thank you very much for coming to present. I believe you're maybe the first representative today we've had from the agricultural community. It's good that you're here.

One of the things that we hear over and over again from the agricultural community is that you just keep having things thrown at you. Of course, we live in very complicated times. You've had the Nutrient Management Act, the Safe Drinking Water Act. There is source protection work going on which impacts, and has to include, the agricultural community. Now there's this.

I know that especially when I talk to some of the smaller farmers, they feel under siege a lot because they have to comply with all of these things, do their jobs, and the resources aren't there to help them comply. So the question would be, what do you think farmers need, should this pass? Of course it will pass, you can count on

that. With all of these other acts that are affecting you, what do you need, as a community right now, to be able to cope with all of this stuff being thrown at you?

**Dr O'Connor:** Certainly, we did get some funding in the last week on the Nutrient Management Act. We don't know how that's going to spin out, but that's been a concern to us.

**Ms Churley:** That was critical, wasn't it?

**Dr O'Connor:** Yes, very critical. Just what percentage is going to be funded is still in the works.

If there's any loss of productive land for any reason, I think we need compensation. If it's for public good and it's sensitive land, then we need compensation. This is the biggest concern I hear from people down in the bottom, where they're right next to the urban sprawl. Are they not going to be compensated properly if there's a freeze on this land? That's a big concern.

**Ms Churley:** That's a huge issue.

**Dr O'Connor:** Huge issue.

**Ms Churley:** Yes, we've heard that before in other locations as well.

Thank you very much.

**Mrs Van Bommel:** Thank you for coming, Dr O'Connor. It's nice to have farmers represented. We've managed to have representation from agriculture throughout these hearings, and I appreciate everyone's efforts in doing that.

One of the things that we heard at one of our other hearings was the issue of surplus buildings and the severing of surplus buildings. I notice in this commentary that you mention the Farming and Food Production Protection Act and the normal farm practices issue. Do you feel that there's a potential for conflict if a farmer is allowed to sever surplus buildings, and there comes the opportunity for conflict between the new owners and the farmer as he farms his land around that?

**Dr O'Connor:** Yes, there certainly is an issue there; a possible conflict, for sure.

**Mrs Van Bommel:** How do you feel we can resolve that?

**Dr O'Connor:** That's a very difficult issue. One of the issues that you mentioned is that I'm here on behalf of agriculture. But agriculture's in the fields these days, and it's very difficult for us to speak unified on this issue, because it's just the wrong time of the year to do any consultation.

**Mrs Van Bommel:** Yes, I recognize that.

**Dr O'Connor:** But to comment on that, it's very difficult. I think there would be issues where it should be allowed and other places where it shouldn't be allowed. Certainly, in some parts of Ontario, we who farm are disappointed to see the front right along the road. You farm too, and I think you'd be disappointed to see all the houses along the road. You can't even see the farm. I think people are disappointed in that.

**Mr Wong:** Dr O'Connor, I understand that some of the issues you've raised here are pretty common throughout a number of regions. Are there a couple of specific issues that are particularly acute or serious in



York region, since you represent the York region federation?

**Dr O'Connor:** We're like the rest of the GTA. The pressure is there for development, as you know from your area too. There's a tremendous pressure down at the bottom end of Markham for development of land. So I don't think we're any different than the other three areas, but the GTA is under tremendous pressure.

**Mr Wong:** Did you make similar submissions to the East Markham Strategic Review Committee?

**Dr O'Connor:** Yes, we were involved in that.

**The Vice-Chair:** Thank you, Dr O'Connor.

Next we're going to move on to the Coalition of Concerned Citizens, Ms Lorraine Symmes. We've skipped the presenter before that because they're not here yet.

We will take another five-minute recess because the next presenter is not ready. She wants to wait for some of her colleagues.

*The committee recessed from 1502 to 1525.*

#### DUFFERIN AGGREGATES

**The Vice-Chair:** We'll be continuing our hearings. The next presenter is Dufferin Aggregates. Presenting on their behalf is Bill Galloway. Good afternoon, Mr Galloway. You have 20 minutes. You may begin.

**Mr Bill Galloway:** Hopefully this is a brief discussion on the greenbelt legislation. We were extremely pleased to participate in yesterday's meeting with the Greenbelt Task Force. Thank you very much for the opportunity to address you, and we're certainly open to questions.

As Dufferin Aggregates, we are a business unit within St Lawrence Cement. We're one of the major suppliers of aggregates to the construction community in the greater Toronto area and the surrounding municipalities. We have five quarries, six sand and gravel operations, and distribution and recycling yards throughout the GTA. Our production is approximately 12 million tonnes. In terms of crushed stone, it's approximately 40% of the total consumption and production within the GTA. It's quite active in the residential, commercial and industrial sectors.

Most of our stone, as you know, is processed into granular material and primarily sold to construction companies. We happen to be associated with one of the largest road builders in Ontario, Dufferin Construction. Our primary use is to make sure that we have sufficient concrete quality aggregates for our own concrete construction company and to support our overall cement strategy in Ontario.

Our primary asset is our Milton quarry. It represents close to 40% of the total product that we sell into the marketplace; roughly 100 people in terms of employment; and in terms of spinoff jobs, another 400 jobs are associated with it.

We operate in Acton, just north of Milton, Flam-  
borough, and throughout the greenbelt in the greater Toronto area. I've included a map, but I'm sure you're

well acquainted with the greenbelt. Dufferin's locations are put on the map for your interest.

As a company, we support the goals of the government with regard to the creation of the greenbelt. We believe that what we do as a company and as an industry, particularly with the rehabilitation we do, is totally consistent with the vision of the greenbelt. Aggregate is a temporary use of land, and we're highly regulated, particularly under the Aggregate Resources Act and the Ontario Water Resources Act. Once our extraction is completed, the land is returned progressively to agriculture, green space, wetlands and recreational uses.

We are an essential part of the economy. We really are depending on the government to recognize the fact that much like hydro, health care and infrastructure, there's a deficit in aggregates as well. We are very close to severe restrictions on aggregates. We should not be curtailing aggregate production within the greenbelt. It's important that we not only recognize that we must be assured of a supply for the economy of Ontario, but as one of a handful of major aggregate producers, we're looking for a clear signal from the government that we should be investing, as a company and an industry, in close-to-market supplies of aggregate.

#### 1530

Our history is such that the GTA is exhausting existing licences. I'm sure you've heard from my colleagues before that three tonnes of aggregates are consumed for every one tonne that is licensed. It takes up to 10 years to have a new licence put in place. We are currently in the ninth year of our Milton quarry extension licence and are in the process—this licence application is fully supported by all agencies, as well as the Niagara Escarpment Commission and local government. We are currently in a joint board, which will go for another 22 to 30 days, and then we expect it will be appealed to cabinet. Over the last 12 years in the Milton quarry, we've sold 60 million tonnes, and we've been trying to get our licence through. As of this point, we haven't been able to license an incremental tonne in the vicinity of the Milton quarry or the Milton quarry itself.

As an industry and as part of the GTA, we need to replace the diminishing supply of aggregate reserves. We've always said, "Well, if it doesn't come from the GTA, what else can we do? Where else can it come from?" There's the concept that Ontario is very rich in aggregates and therefore we can just move it further and further afield from the actual use, from the actual urban centres that consume our product. We recognize that when you do that, you're really creating other issues. The other issues are more trucks going past more people, the consumption of fossil fuels and an actual increase in greenhouse gas emissions. There are specific numbers in the presentation that deal with that, and specific numbers that deal with the actual increase in transportation costs, which are close to \$4 billion over the 10 years, recognizing that not only is transportation more than 50% of the total delivered price of the product but government



also is one of the purchasers of over 50% of the product used in the GTA.

We're described in the current legislation as an urban use. In all of the municipal official plans and the provincial policy statement itself, we're described aptly as an interim use of rural lands. We are in fact described as a rural land use.

We are in very strong support of the provincial policy statement, which promotes close-to-market supply of aggregates in rural areas. We also are a strong supporter of ensuring that municipalities and agencies in effect follow the provincial policy statement.

We move that the suggested "to be consistent with" versus "having regard to" would be a very important change, not only for the aggregate industry but for those who are part of managing this industry in partnership with us, particularly municipalities and agencies such as conservation authorities.

Our number one recommendation—and we have provided some wording on page 9 of our presentation dealing specifically with the definition of "urban use." We wish to suggest a change where it "means uses that are non-resource commercial, non-resource industrial, multi-residential, institutional, mixed use commercial/residential and golf courses or as otherwise prescribed by the regulation." I think that would be a simple way to define urban use and clarify the definition of aggregate within the greenbelt legislation. That would be consistent with the provincial policy statement and with most official plans within the municipalities.

I would like to also talk about the opportunity for open and accountable partnerships as a second recommendation. We do have the Aggregate Resources Act, which is a very good act. The province has the opportunity to expand the aggregate operations that are currently governed by the Aggregate Resources Act. Right now it's primarily focused on southwestern Ontario, the GTA and some other key geographies, but the entire province is not covered by the Aggregate Resources Act. This act, as well as the process you go through, provides the ability for companies such as Dufferin—and the example I've used here is Halton, where we work closely with regional governments, the Niagara Escarpment Commission, conservation authorities and the various ministries in partnership through the execution of our site plans and the execution of our monitoring reports. We have annual monitoring meetings where we sit down as a group and review the monitoring reports in detail, removing those issues that are of concern to any of the agencies and improving upon the ecological or water monitoring that may be required as time evolves or we notice changes within our operation or changes in legislation.

We recommend that new government and industry partnerships be used to strengthen the licensing and the after-use opportunities. After-use opportunities are one of the key elements. The after-use has to be consistent with the goals and objectives of the greenbelt legislation and of the greenbelt itself. We also feel that government and industry—and I would specify "and industry"—provide

the necessary funding to ensure that the aggregate program is managed in partnership on a continuing basis.

I think the current regime provides the opportunity for open and accountable partnerships. Multiple agencies can work with industry successfully. We'd like to see an expansion of those types of collaborative efforts.

I've included on page 11 a map that outlines the various rehabilitation sites across the greenbelt area, including the Niagara Escarpment and the Oak Ridges moraine, and various pictures around the Golden Horseshoe in more detail that deal specifically with the rehabilitation of pits and quarries and the various after-uses that these lands have been converted into and have been put back, in some cases, to their original use, and in some cases to a more productive use.

Regarding the aggregate quarries in the greenbelt, Dufferin has just finished the celebration of Earth Week. One of our key successes is that over the course of Earth Week, through Scouts and school groups, we had more than 1,000 youths participate in our tree planting and our ecological programs and as part of our ongoing rehabilitation. In that particular week alone, 15,000 trees were planted. Last year in the Milton quarry we celebrated a young Beaver planting the 50,000th tree in the Milton quarry.

1540

We also have an ongoing partnership with the agencies around us, particularly the Bruce Trail and the conservation authority, where we have over three kilometres of main trail along the boundaries of our quarry. We also have ecological lookouts where people can participate. We have funding programs within the Royal Ontario Museum in terms of fossil programs. We've had a 40-year relationship with Scouts Canada, where the Scouts park themselves and have fun. They go up into the wilderness camp. It's half an hour from an urban community, and they have an absolutely marvellous time.

We have wonderful rehabilitation. It's been over 12 years, but the species are incredible, from cliff swallows to butterflies to frogs to trilliums. We have over 40 types of breeding birds. So progressive rehabilitation does work and does add to the goals and direction of the greenbelt. There is a variety of pictures from open houses, and they're all there for your viewing pleasure.

In summary, I think if you look at Dufferin Aggregates' position, we support what the government is trying to do. We feel we can work effectively within the document that was presented at the task force meeting yesterday. We feel that through a provincial policy statement and the rules of engagement, the goals, objectives and vision of the greenbelt can be implemented through the municipalities and the conservation authority, as long as there are clear rules of engagement.

We would ask that you recognize us as a rural use, necessary and close to market, help us get the necessary licences that are required to sustain the economy and support our own efforts as an industry in progressive rehabilitation. Thank you.



**The Vice-Chair:** We have just a little bit over four minutes, so we can get one question from each side, very quickly.

**Ms Churley:** Thank you very much for your presentation. I understand there's quite a lot of controversy about this particular quarry extension. You mentioned that it's before a joint board right now.

One of the issues—and there are many, but there's no time to go into them. You just talked about some of the wildlife in some of the rehabilitated areas. One of the issues is the salamander, which is in that area, and that the continuing extraction there could in fact cause a big problem for that particular wildlife. Are you aware of that? What's your answer to that?

**Mr Galloway:** I'm aware of it. In effect, the area that has been of concern to the environmental groups will not be extracted. In the early days, it was recognized that there were two wetland pockets, both of which were man-made, and a concrete pool that were suspected of having salamander habitat. So in agreement with the region conservation authority, and as has been told to the joint board prior to the joint board sitting, we will not extract those areas. They are not part of our footprint and it's been clearly recognized that they will not be part of our footprint.

In terms of controversy, we have approximately 275 neighbours very close to us and we have one neighbour adjoining us who has opposed. There have been five other neighbours out of the 275 who have shown up. We've had over 100 public meetings and—

**The Vice-Chair:** Thank you.

**Ms Matthews:** I have a question about rehabilitation of aggregate pits. I don't know enough about what's involved, and we have some great examples here. Are these typical results after rehabilitation?

**Mr Galloway:** They're typical within the larger companies. There are many sites where the land just goes back to agricultural use, which is still a fine benefit to the community and Ontario. Typically what we do at the beginning, and what the industry tries to do, is salvage native species so we can continue to rehab as we go along. You will find examples like this right across the province.

We also contribute to a fund to deal with history, which is called the abandoned pits fund, managed through the Aggregate Resources Corp. The industry contributes money into that fund to deal with some of the issues from the past, some people who are no longer there. We work with individuals who own the land to rehabilitate their land or do whatever they may require.

**Ms Scott:** I'll ask you a question about working with municipalities. I've heard some comments about the roads. I don't know specifically with your firm what the deal is with the municipalities for the wear and tear on the roads and the price per tonne that needs to be looked at to have more compensation for the use of the roads when they are drawing out from the quarries. I was just wondering if you could make a comment.

**Mr Galloway:** There is not in the aggregate levy a specific amount of the six cents a tonne we pay that is specifically to deal with roads; it goes into the municipality's general fund, much like it does with the province. Each situation is somewhat different. If you look at our situation in Milton, we contribute to repavings, we contribute to traffic lights, various other traffic controls. We are currently in the process of investing over \$400,000 in Kawartha Lakes in partnership with the city to replace roads. So it's not something that is specifically in the licence. It really is some of these co-operative partnerships where you try to work together with the municipality to meet their needs and meet the needs of getting the product to the market.

**The Vice-Chair:** Thank you for your presentation.

#### COALITION OF CONCERNED CITIZENS

**The Vice-Chair:** The next group is the Coalition of Concerned Citizens.

**Ms Lorraine Symmes:** I hope we're getting over our technical difficulties.

**The Vice-Chair:** You can start any time.

**Ms Symmes:** There is a handout that you all have, but it's a prettier picture if you look up here.

We are here today on behalf of the Coalition of Concerned Citizens. We congratulate the Ontario government for their proposed legislation, Bill 27. The CCC believes that a permanent greenbelt needs to protect environmentally sensitive areas and corridors, prime agriculture land, key headwaters and water source protection areas and to protect against incompatible land uses within the greenbelt.

The Coalition of Concerned Citizens of Caledon was incorporated in 1997 and today has grown to over 5,000 supporters. Our goal is to ensure good land use planning by protecting Caledon's water, environment and communities from the threat of irresponsible urban and aggregate development.

The coalition is no stranger to working hard with government toward a long-term green legacy. In the past we've worked closely with the town of Caledon and the region of Peel as a major stakeholder in the Caledon resource study settlement talks of 2003. We are also supporters of the Ontario Greenbelt Alliance and the Credit River Alliance.

1550

Having read through Bill 27 and the task force discussion paper, we would like to make the following comments and recommendations.

The coalition in general supports the goals and vision of the Greenbelt Task Force. We would like, however, to recommend that greater emphasis and connectivity be made between the water source protection initiatives of the Ministry of the Environment and the greenbelt area that's ultimately protected.

Since Walkerton, water is of primary concern to all Ontarians. It is the essential building block of all healthy



natural systems and communities. We recommend that strong links be made integrating the greenbelt and water source protection. Groundwater supply, wetlands, recharge areas, river valleys and forest cover are key components of our watersheds and must be protected in the greenbelt.

We submit that water is our most important natural resource, and long-term planning in the GTA must protect water for further growth. Some of this was accomplished in the Oak Ridges moraine act, but we note that Bill 27 fails to include key source water areas west of the Niagara Escarpment in the Paris moraine. This could impact the Credit River, the Grand River and some Halton watersheds that feed into Lake Ontario and Lake Erie. Leapfrog development into Wellington and Dufferin could have an unwanted negative effect on equally sensitive water source areas in the Paris moraine. The coalition recommends the addition of these headwater areas into the greenbelt study area.

With reference to aggregate operations, we'd like to comment on the impacts of aggregate sites on water and green space, and encourage you not to exempt them from greenbelt restrictions. Since water is a necessity of life, we are concerned that the areas of important groundwater source be protected from incompatible land uses. Aggregate resources are of provincial interest, but extraction should not be at the expense of our groundwater supply.

We recommend an important clarification of the provincial policy statement that would clearly prioritize water as the most important resource to be protected in situations of conflicting resource interests.

When pits and quarries are mined below the water table, significant water draw-downs can potentially have negative impacts for kilometres around the site. They can damage sensitive areas that we are trying to preserve. This graphic is an example that shows the potential of a draw-down effect. Here, there is a potential drop in the water table of up to 65 feet immediately adjacent to the Niagara Escarpment. Groundwater contamination can also occur during these industrial operations, and contamination of the groundwater can sometimes take centuries to purify. We need to ensure that the aggregate locations do not threaten the integrity of our water quality and quantity.

Aggregate companies often inflict significant damage on green areas and communities. We therefore recommend that new aggregate operations not be allowed within the greenbelt area lands. Allowing them within the greenbelt would damage the credibility of the government's very positive plans for green space preservation.

The terms "green space" and "pits and quarries" seem mutually exclusive when you look at the noise, dust, heavy truck traffic and water impact that an aggregate operation can have. These are heavy industrial sites and do not belong in a designated protected green corridor. The essence of good land use planning is keeping incompatible land uses separate. Do these heavy industrial sites belong in a greenbelt? The coalition recommends that

aggregate operations not be considered appropriate in the greenbelt lands.

The coalition strongly agrees with the task force that a much more rigorous standard is needed for aggregate rehabilitation.

In the last decade the track record for pit rehabilitation has been poor, despite the fact that the Aggregate Resources Act states that it is a requirement. Why is this reclamation not enforced? Unless the rehabilitation rate improves dramatically, the claims of interim land use for this degraded land can no longer be made. I believe between 1992 and 2000, something like 5,000 extra hectares of degraded land have been added to that side of the balance sheet. So right now we're adding more than we're reclaiming, by a large portion. Is rehabilitation not in the best interests of the Ontario communities?

In regard to prime agricultural lands, the coalition supports the task force recommendations that land speculation pressure be reduced on prime farmland. In addition, we agree that the viability of agriculture depends on a number of issues and that a separate task force involving all levels of government should be struck to develop supportive tools and policies for the agricultural industry. We also support additions to the bill that would meet the needs of agriculture, but not erode the viability of prime agricultural areas.

As mentioned earlier, the coalition has worked extensively with the region and the town of Caledon in developing a multi-stakeholder settlement over the Caledon community resource study. This precedent-setting agreement includes approval from provincial ministries as well as the OMB. This was, and is, a significant accomplishment. We hope that any legislation coming from the government will not construe as giving more importance to the aggregate issue than is incorporated in the Caledon official plan.

In conclusion, we applaud the efforts you have made so far toward protecting our natural heritage and supporting healthier communities. We encourage the government to make this land permanently protected and to make it as large as is realistically possible. The better we buffer our green space, the more successful and healthy our natural heritage and our communities will be. Future generations will thank you for it. In the end, our society will be defined not only by what we create, but by what we refuse to destroy.

**The Vice-Chair:** Thank you. We have about 10 minutes for questions and comments.

**Ms Symmes:** I'd just like to introduce Penny Richardson, the president of the coalition. I'm a director. She's also here for questions, if you have any.

**The Vice-Chair:** Thank you. We'll begin with questions and comments from the government side.

**Mr Rinaldi:** Great presentation. Thank you very much. Part of the presentation and the photographs that you showed with the unrehabilitated quarries—were they all in the greenbelt, in the area we're talking about, or are they just photographs from anywhere?



**Ms Symmes:** No, I believe most of them were either the Acton quarry or the Dufferin quarry or the examples we have—

**Mr Rinaldi:** Are they active quarries right now?

**Ms Symmes:** Yes, they are.

**Mr Rinaldi:** Do you know what the plans are for rehabilitation once they're—

**Ms Symmes:** On those two specific sites, I cannot offer that to you, but I'm sure Mr Galloway could give that to you once they're finished. He's provided you with quite a few pictures, I know.

**Mr Rinaldi:** I just want to make sure we get a true picture of what you're presenting and of the actual facts.

**Ms Symmes:** I didn't mean to misrepresent that. What I'm saying is, those pictures show how difficult the high negative impact these sites have on any green area, any community. Certainly, those pictures, I do not believe, say that these haven't been reclaimed. I'm showing that those are heavy industrial areas and that we do have a much greater amount of acreage that is being degraded and not being reclaimed. So it's an issue we need to address.

**Mr Rinaldi:** Thank you.

**The Vice-Chair:** Any more questions?

**Mr Wong:** Just a very short question. Certainly, I think many of us agree with you that water is a very important resource, but in terms of prioritizing it as the most important resource to be protected in a situation of conflict, is that done or something similar done in any other province or state in the US?

**Ms Symmes:** Off the top of my head—Penny, do you know of any?

**Ms Penny Richardson:** No, I don't know whether that's been done or not. I just know that, from what's happened historically in Ontario and with worldwide water shortages, fresh water supplies, I think the provincial policy statement should re-examine where our priorities lie, in that aggregates can be sourced in areas other than where there is water conflict. If we do have to bring them from a little farther afield, I think it's well worth the extra cost if it's going to mean detrimental effects to our water supply.

**Mr Wong:** Thank you for that answer, but of course you are requesting that we prioritize water as the most important resource, not only the more important one with respect to aggregates.

**Ms Symmes:** When it's in conflict with other resource interests, I think, certainly after Walkerton, we know that water is of the highest importance of all our natural resources. I mean, you can't live without it. So we need to make sure that it's not degraded.

**Ms Scott:** Is there an example you can give in the Oak Ridges moraine of a pit or quarry that's done damage below the water table? Is there an example within the Oak Ridges moraine that's present now, that you know of?

**Ms Symmes:** That's not an area of my expertise. We're in Caledon. So I really wouldn't want to comment on that.

**Ms Richardson:** No, the only thing that we can say is that in the official plan that Caledon and all the stakeholders finally agreed to, it is much more onerous to mine below the water table. There are far more tests and qualifications than mining above the water table. That was agreed to by the municipalities, by the aggregate industry, by the province and by the residents. So I think they were wise to do that.

**Ms Scott:** OK. So you've been able to deal with the aggregate companies, the municipalities?

**Ms Richardson:** Yes, I think it was approximately three years that we sat around the table negotiating the settlement that finally became the resource study for Caledon.

**Ms Scott:** OK, and that's just for the Caledon area?

**Ms Richardson:** Yes, that's just recently.

**Ms Scott:** OK. Thank you.

**Ms Churley:** Thank you. That was a great presentation. The slides were beautiful. It was worth all your hard work to get it up there.

**Ms Richardson:** It was nerve-wracking.

**Ms Churley:** I could tell. Good thing we had time, actually.

Just in a few short minutes—I think you have some good ideas in here that we should be exploring. I'm interested in knowing more, though, about the precedent agreement that you made around aggregate, in particular that you would like to see incorporated into this. I see that you say it includes approval from provincial ministries, as well as the OMB, but what else have you included in that agreement that makes you feel so satisfied with the final outcome?

**Ms Richardson:** What basically happened was the stakeholders went through the whole of the Caledon area and eliminated basically the villages, obviously, which couldn't be mined; they eliminated the residential areas, huge woodlots, sensitive water areas or sensitive wetlands; and then they came up with a map where the aggregate is actually found. They overlaid those sensitive areas and came down with a finer-tuned map. Then we sat around the table negotiating what would eventually be left on that map and, I guess, basically came up with something that was agreeable to all the residents and those stakeholders. That's how we did it. As I said, it took a heck of a long time, but I think it was well worth the time involved.

**Ms Churley:** Thank you very much. Good work. Congratulations.

**The Vice-Chair:** Thank you, everyone. The committee is adjourned until May 31 at 3:30 pm in Toronto. Have a nice long weekend and a nice week off, all members.

*The committee adjourned at 1604.*







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## CONTENTS

Friday 21 May 2004

<b>Subcommittee report .....</b>	<b>G-339</b>
<b>Greenbelt Protection Act, 2004, Bill 27, Mr Gerretsen / Loi de 2004 sur la protection de la ceinture de verdure, projet de loi 27, M. Gerretsen.....</b>	<b>G-339</b>
Township of Brock .....	G-339
Mr Keith Shier	
Mr Thomas Gettinby	
Aggregate Producers' Association of Ontario .....	G-341
Ms Carol Hochu	
Mr Peter White	
Environmental Defence Canada/Ontario Greenbelt Alliance .....	G-345
Mr Rick Smith	
Mr David Donnelly	
Township of King .....	G-348
Mr Bob Casselman	
Mr Stephen Kitchen	
Region of York .....	G-351
Mr Bryan Tuckey	
Storm Coalition .....	G-354
Ms Debbe Crandall	
Town of Newmarket .....	G-356
Mr Tom Taylor	
Town of Whitchurch-Stouffville.....	G-358
Ms Sue Sherban	
Coalition on the Niagara Escarpment .....	G-361
Mr Bradley Shaw	
Ms Linda Pim	
West Duffins Landowners Group .....	G-364
Mr Mark Flowers	
Bayview East Landowners Group .....	G-367
Mr Andrew Madden	
York Region Federation of Agriculture .....	G-369
Dr Terry O'Connor	
Dufferin Aggregates .....	G-372
Mr Bill Galloway	
Coalition of Concerned Citizens .....	G-374
Ms Lorraine Symmes	
Ms Penny Richardson	

N  
16  
G23



G-15

G-15

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## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 31 May 2004

# Journal des débats (Hansard)

Lundi 31 mai 2004

## Standing committee on general government

Greenbelt Protection Act, 2004

## Comité permanent des affaires gouvernementales

Loi de 2004 sur la protection  
de la ceinture de verdure



Chair: Jean-Marc Lalonde  
Clerk: Tonia Grannum

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 31 May 2004

Lundi 31 mai 2004

*The committee met at 1538 in room 151.*

## GREENBELT PROTECTION ACT, 2004

LOI DE 2004 SUR LA PROTECTION  
DE LA CEINTURE DE VERDURE

Consideration of Bill 27, An Act to establish a greenbelt study area and to amend the Oak Ridges Moraine Conservation Act, 2001 / Projet de loi 27, Loi établissant une zone d'étude de la ceinture de verdure et modifiant la Loi de 2001 sur la conservation de la moraine d'Oak Ridges.

**The Chair (Mr Jean-Marc Lalonde):** I would call this meeting to order. Before we ask any of our presenters to come to the table, I would just like to remind members that we got an answer from the minister. One of the members had asked a question to the minister the week before last and everyone has received this copy.

## CITY OF PICKERING

**The Chair:** The first presenter this afternoon is the city of Pickering. Mr Thomas Melymuk, you have 20 minutes, all of which you can take up, or you can leave some time for a question period at the end. Also, if any presenter wants to do it in the language of their choice, we have instant translation in place. You can proceed.

**Mr Thomas Melymuk:** Thank you, Mr Chairman and members of the standing committee, for giving me an opportunity to speak to you today.

I'm here on behalf of the city of Pickering to present my comments, observations and suggestions on Bill 27. I've provided a copy of my presentation to the clerk and have asked that it be distributed to committee members.

Before I go any further, I'd like to give you some background on myself. I've worked for the city of Pickering for over 25 years, initially within the planning department and, more recently, in the CAO's office. I hold a master's degree in urban environmental planning from York University's faculty of environmental studies. In my current position with the city as division head of corporate projects and policy, I oversee and coordinate various programs, including growth management, economic development and emergency preparedness.

In terms of my environmental activities, I am currently a member of Transport Canada's Green Space Stewardship Advisory Committee, which is assisting the federal

government in preparing a master plan for over 7,000 acres of federal lands in Pickering, Markham and Uxbridge. Also, for the past eight years I have been a member of the Rouge Park Alliance. I have a broad and diversified background and believe that I bring a balanced perspective to the discussion of Bill 27.

Let me begin my remarks by saying that the city of Pickering has mixed feelings about Bill 27. Initially, when we heard about the bill, we were pleased to see that green space protection had become an important government priority and that the province was prepared to take action. But then, after we read the bill more closely, we became increasingly uneasy. From our perspective, the bill has two main purposes: (1) It establishes a very broad greenbelt study area; and (2) it severely limits the rights of municipalities and individuals to undertake certain planning activities within this very broad study area.

Unfortunately, the bill is silent on the type of study that is to be done and makes no mention of how municipalities are to be involved in the process. It also provides no assurance that planning work being undertaken by municipalities will be incorporated or considered in the greenbelt study.

We began to wonder whether Bill 27 was introduced to help municipalities deal with the complex problem of growth management or whether it was simply a politically expedient quick fix that would have the unfortunate side effect of giving the provincial government more control over the municipal land use planning process than absolutely necessary.

Perhaps you will better understand our concern after I tell you a bit about the work we are doing in the city of Pickering.

I'd like to start by referring you to the map entitled "Planning Context." The city of Pickering lies immediately east of Toronto and Markham. It extends from Lake Ontario to the Oak Ridges moraine. The city is predominantly urban in the south and rural in the north. It also has substantial provincial and federal lands within its boundaries, lands that were acquired by the federal and provincial governments 30 years ago to build a new airport for Toronto and a new community to the south. Neither the airport nor the new community has yet been built.

The planning context map also shows you the city's growth management study area. That area abuts Pickering's existing urban area and includes 7,000 acres of



provincially owned lands known as Seaton, as well as about 5,000 acres of privately owned lands to the west.

I'd now like to refer you to the table entitled "City of Pickering Population and Employment Projections." As the table indicates, Pickering has an existing population of around 95,000 people, and we provide approximately 30,000 jobs. Over the next 30 years, regional projections indicate that the city will need to accommodate a total of 215,000 people and 87,000 jobs. This represents an additional 120,000 people and 87,000 jobs.

The challenge this poses for the city is to try to accommodate this population and employment increase in a cost-effective and environmentally responsible way. We have established a two-pronged strategy to manage our growth: first, by accommodating about one third of the expected increase through infill and intensification in our existing urban area in south Pickering. That's about 40,000 more people and 19,000 more jobs. The second part of our strategy is to accommodate the remainder of the expected increase through the development of a compact, transit-supportive new community in central Pickering. That will account for the remaining 80,000 people and 38,000 jobs.

We currently have an intensification study underway to proactively encourage 40,000 more people and 19,000 more jobs in south Pickering. We are also completing a growth management study for lands in central Pickering, and I'd now like to tell you more about this study.

Early in 2003, Pickering council hired a consulting team, led by Dillon Consulting, to complete an independent, arm's-length review of lands in central Pickering, including the provincial Seaton lands and the abutting privately owned agricultural assembly lands to the west.

Council asked the consulting team to prepare a structure plan for the growth management area based on 10 principles. Additional detail is provided in the handout, but in summary the principles are:

- (1) Maintain environmental integrity;
- (2) Respect cultural heritage;
- (3) Foster a healthy countryside;
- (4) Provide jobs first;
- (5) Use infrastructure economically;
- (6) Create a mixed-use community integrated with the existing built-up area;
- (7) Support a range of transportation choices;
- (8) Require quality urban design;
- (9) Create a community that can evolve and adapt over time; and
- (10) Stage development to be consistent with the principles.

Our growth management study is divided into three phases, the first of which was to gather and analyze background information, including up-to-date environmental information. Phase 1 was completed last year. It formed the basis for phase 2, which was the selection and evaluation of growth options. Our consulting team completed phase 2 early in 2004.

In February of this year, the consulting team's recommended structure plan was circulated to agencies and the

public. Substantial input has been received and a staff report has since been prepared. The staff report will be presented to council before the end of June.

Staff is recommending that council endorse the consulting team's structure plan as a basis for establishing a new urban boundary and land use designations. A copy of the recommended structure plan is provided in the handout.

Without getting into a lot of detail, I'd just like to say that the recommended structure plan accommodates the city's required population and employment projections that I mentioned earlier, using as small an urban footprint as possible.

The plan provides for a compact, transit-supportive urban form, makes efficient and economic use of existing infrastructure, and protects all significant natural areas. It also proposes to retain significant countryside north of Taunton Road that can contribute to a continuous regional green space between Lake Ontario and the Oak Ridges moraine. This regional green space is shown in the handout, on the map entitled "Regional Greenspace and Existing Infrastructure."

We have presented our growth management study to the Greenbelt Task Force and have encouraged them to incorporate the results of our work in making their recommendations. We have also presented this information directly to the Minister of Municipal Affairs and Housing as well as to the Minister of Public Infrastructure Renewal.

We believe strongly that the conclusions reached in our growth management study are appropriate, comprehensive and defensible. We also believe that the best way to establish green space boundaries is through the completion of a comprehensive, defensible growth management study that takes into consideration environmental, economic and social objectives.

We do not want our work to go to waste or to be disregarded in the greenbelt study process. To ensure this does not happen, the city has the following specific suggestions with respect to Bill 27:

(1) That the bill be amended to require that any study that is undertaken pursuant to the bill consider and incorporate the results of growth management studies that have been initiated by local municipalities prior to the introduction of the bill; and

(2) Failing this, that Bill 27 be amended to exempt from the provisions of the bill those municipalities that have initiated growth management studies prior to the introduction of Bill 27.

I thank you for your time and would be happy to answer any questions you may have.

**1550**

**The Chair:** We have approximately 13 minutes left, which will be divided among the three parties. I will start with the official opposition.

**Mr Jerry J. Ouellette (Oshawa):** Thank you very much for your presentation. I very much appreciate that.

I know the area fairly well. How do you think this legislation is going to affect everything that may be

taking place in the future in Claremont, which is essentially located directly in a lot of the planned area right now?

**Mr Melymuk:** Your question was on the hamlet of Claremont?

**Mr Ouellette:** Yes.

**Mr Melymuk:** The hamlet of Claremont is not designated for urban growth. I think it would be surrounded by green space and that would be consistent with our plans for that hamlet.

**Mr Ouellette:** So you don't expect any impact at all?

**Mr Melymuk:** Not on the hamlet of Claremont.

**Mr Ouellette:** One of the other areas, as you know, is that your community has benefited significantly from the 407 coming into it. With this new legislation moving forward, it may make some changes—I know the regional chair was concerned about the development of the 407—to the rest of the region. Quite frankly, the people who are living in your community may not be just working there; as well, they'd be working outside. Do you think there'll be any impact on the movement of the 407, which in my opinion is probably the largest economic stimulus for the region?

**Mr Melymuk:** The city's position on 407 is to encourage its extension easterly so that we can take advantage regionally as an economic stimulus, but also to alleviate traffic problems that we're having right now on Brock Road, which is the terminus of Highway 407. In terms of the legislation, we, in our growth management study, identified an opportunity for a strong economic corridor along Highway 407 to provide a number of new jobs for the city. So we very much hope that the growth management study, the conclusions we have with respect to the Highway 407 corridor, will be allowed to be implemented.

**Mr Tim Hudak (Erie-Lincoln):** Thank you for the presentation. I think you make an excellent point on page 2. No doubt this is a politically expedient quick fix that brought the legislation forward without thinking about the impacts on municipalities, agriculture and business. Hopefully we'll get some answers to that before this committee is asked to report back to the Legislature.

With respect to your growth management study and the agricultural preserve in the Pickering area, what's been the government's response to the proposal of that growth study to look at some controlled development in the Pickering agricultural preserve?

**Mr Melymuk:** We've had an opportunity a number of times, as I mentioned, to present our information to the ministry and to the minister himself. We have received information back that it is under consideration. The entire portion that we refer to as the agricultural assembly on the west side is under consideration for part of the greenbelt. Quite frankly, that causes us concern since our growth management study indicated that the most reasonable use of land in the south portion of that assembly is indeed as part of our urban expansion.

**Mr Hudak:** Have they indicated they might consider some development in that south portion of the parts of the agricultural assembly?

**Mr Melymuk:** We haven't received definitive word on that yet. We're hoping, as we continue to present our information, that our work will be convincing enough that that position can be accepted by the government.

**Ms Marilyn Churley (Toronto-Danforth):** Thank you very much for your presentation. I want to go to left field a little bit, so to speak, and not ask you directly about your proposal and your deputation today but ask you in general. I know you have a specific case to make here, but the pieces of land that aren't frozen right now—and that's what we've been referring to a lot in this committee as leapfrog development. Are you familiar with that term?

There was an article about this by Kate Harries in the *Toronto Star* on May 30, talking about the leapfrog development that's going on, while some is being frozen in a particular geographic area. I just wonder what you have to say about that, if you have any comments on the issue of the impact that could have. While certain lands are being frozen right now, perhaps never to be developed, this other leapfrog development will be taking place if there is no amendment put forward.

**Mr Melymuk:** Thank you for the question. I'm personally very concerned that legislation like this could indeed create a leapfrog north of the Oak Ridges moraine and put pressures on municipalities that, in my estimation, wouldn't be in a position to respond as effectively as municipalities that currently have the infrastructure, have the support services to accommodate growth and, as our study indicated, could very well accommodate a significant amount of population and employment—which is the other side of the equation that we sometimes forget about—within close proximity of where people will live and work, so that we really do reduce commuting. If the overall objective is greenbelt protection, I think we have to be very careful that the legislation does not preclude reasonable and responsible development opportunities in close proximity. Indeed, our lands that we were suggesting for urbanization are south of Steeles Avenue for the most part, which is where the services are in most communities.

**Ms Churley:** So what you're saying is, in your opinion from what you know about this legislation, if some amendment isn't passed to include some of those lands further north, in south Simcoe for instance, we could end up with legislation that might make us worse off in some ways because there will be less planning and more leapfrog development, which will cause even more environmental problems perhaps.

**Mr Melymuk:** Indeed. Part of what we've seen in doing our work is that the issue is very complex. A single legislative action, however well intended, may not have the appropriate response; it could create more problems than it was intended to solve.

We approached the issue from a very comprehensive perspective, looking at growth requirements as well as environmental protection, and came up with a responsible position. I think that's the way this issue has to be addressed: more from a growth management side than, strictly speaking, greenbelt protection.



**Mr Brad Duguid (Scarborough Centre):** I just want to thank Mr Melymuk and the city of Pickering for the extensive work they have done in terms of their planning. We've actually had the opportunity to meet with you and your staff and your mayor on at least one or two occasions. I don't know if the minister has gotten out and done the tour yet, but that's something that is in the plans, and I want to thank you for that invitation as well. You've done an extensive amount of work, and you've done a very extensive amount of work for your presentation today, so I thank you for that.

You're quite right: The land issue in Pickering is a very complex issue. It's one that we're all having a look at right now and consulting with you on. Have you had an opportunity to sit down with environmental groups in the area and have you been able to reach a consensus with them in terms of the agricultural preserve? That seems to be the key issue that's outstanding right now.

**Mr Melymuk:** We have had numerous opportunities through our study for public input and consultation. Indeed, as I mentioned earlier, I sit on the Rouge Park Alliance and have been part of Transport Canada's Greenspace Stewardship Advisory Committee. So through a number of months working on this project I have had opportunities to discuss with many environmental groups the work that we're doing.

I think it's fair to say that we haven't reached consensus, because I don't think that's possible on something as complex as land issues. But we're very closely trying to establish a strong greenbelt connection between the lake and the moraine, that when we have talked about it—particularly with respect to lands in Markham, where we will share some green space. Quite frankly, the solution we came up allows for four to five kilometres of green space between Finch Avenue and the Oak Ridges moraine. So it's quite significant, but not a consensus; I cannot claim that.

**The Chair:** We have about 30 seconds left, and Mr Arthurs had a question.

**Mr Wayne Arthurs (Pickering-Ajax-Uxbridge):** Very quickly. Tom, it's good to see you. Tom and I go back some 21 years in elected and staff capacities.

Your recommendations on page 5: The first one says "That the bill be amended to require any study that is undertaken pursuant to the bill"—once the bill's passed—"take into consideration growth management studies" in local municipalities that were in the works "prior to introduction of the bill."

In effect what I think you're saying there is that we understand this bill is about setting out a boundary area, a study area, and what you would like to see is, even within that study area, where there are growth management studies under way, that the bill specifically takes those into account on the subsequent processes. Is that a fair assessment?

1600

**Mr Melymuk:** Yes, indeed, that is what we are asking, because we have done a lot of work and we believe we have a very appropriate solution for our particu-

lar part of the world. We would hate to have legislation come forward that totally disregards some of that work we have done. So we would like it incorporated, and if the bill can guarantee that the amount of work municipalities have done is not wasted and is built into things on a go-forward basis, that would very much meet our favour.

**The Chair:** Thank you, Mr Melymuk. Our time is up. We appreciate your presentation.

#### WOODBINE ENTERTAINMENT GROUP

**The Chair:** Our next group is Woodbine Entertainment Group, represented by Jane Holmes. Good afternoon. On behalf of the standing committee on general government, I'd like to welcome you this afternoon for your presentation. You have 20 minutes. You could take the whole 20 minutes or leave some time at the end for question period.

**Ms Jane Holmes:** Thank you very much for allowing me to come make this presentation today. My name is Jane Holmes. I'm vice-president of corporate affairs at Woodbine Entertainment Group. I'm here to make a presentation about a development for which we have already submitted zoning bylaw changes and official plan changes with the town of Milton and the region of Halton.

To give you a little bit of background about Woodbine Entertainment, it is a not-for-profit organization with a clearly defined objective to generate the revenues necessary in order to provide horse racing of the highest quality at the best facilities possible for the benefit of the public and all industry participants. We're the largest racing operation in Canada. We represent about 70% of horse racing in Canada.

The site that we're talking about is located out in Campbellville, which is on the north side of Highway 401 and on the west side of Guelph Line. Right now we have there a seven-eighths-mile harness racing track. There's a grandstand that holds 5,000 people. We have trackside dining and we have a 20,000-square-foot themed gaming facility in which there are 750 slots, with which the Ontario Lottery and Gaming Corp is our partner. We also have a backstretch that has a training track and we have approximately 700 horses stabled on the facilities. We have dormitories for approximately 90 grooms in the backstretch.

Woodbine employs about 2,700 individuals at Mohawk and Woodbine racetracks and at our off-track tele-theatre locations, but I think the importance is the number of jobs that the racetrack generates across the province and rural Ontario. Right now, horse racing generates up to 60,000 jobs directly and indirectly in the province.

The calibre of racing on the Woodbine circuit is one of the best in North America in terms of all of the participants. We compete with only one track in the United States, and that would be Meadowlands, but we are considered the number one, number two track in North America.



Included in your package is an aerial photograph of the property. You can see along the bottom Highway 401; north is Guelph Line. There's a light ring across the top, which is a hydro corridor, so the land is separated to the north with a hydro corridor. To the east of the property, there's a small residential development. There is a turkey farm on the other side of the hydro right-of-way. There's also a junkyard adjacent to Guelph Line, north of the property. To the south of the property, there's a KOA Kampground, and right at the turnoff at Highway 401 and Guelph Line, there is a gas station and a Mohawk Inn.

We submitted our planning applications last year. They got stalled with the ministerial zoning order in December. While we're still working with Conservation Halton, no progress has been made on this. We believe that the development, which will be a hotel, conference centre, spa and meeting and trade exhibition facilities, will complement the existing facilities on site, those being the horse racing and the gaming.

Right now the property is identified or designated and zoned as rural area and there's a small portion on the southeast corner, which is just—here's the racetrack oval here, this is the grandstand area, and right here we have an area that is designated as greenlands area. Beside that, we have the sewage lagoons for the complex now. So it's that one small area which is called greenlands area, in which no development can happen, and when you see our outline for our development proposal, you can see that we are preserving the greenlands area. If we go to the concept drawing, again this is our greenlands area right here. It doesn't have anything provincially significant in it but it does encourage promotion of the wetlands. You can see that we are maintaining the backstretch. That's where we have the 700 horses stabled in the backstretch.

The development is going to be contiguous to the existing grandstand. So the hotel, convention facility, spa, meeting rooms and dining facilities will all be attached to the existing grandstand. We have designed a golf course around the system and some changes have been made to that based on comments we've received from Conservation Halton.

The next diagram gives you an overview of what the facility would look like. This is the existing grandstand on this side. The rest of it would be the new facility. In that area, there is not a major hotel. The closest one is in Mississauga and there's nothing until Cambridge. You have some roadside motels but you don't have any development or conference facility complex.

The market study that was done for this facility identified that this would be a very significant resort-gaming sector facility. It would be one of the few that offers gaming facilities along with the proposed resort-recreational amenities that come with the harness racing and the gaming facilities. What they believe is that it has a built-in competitive advantage. The other thing is that with all the traffic going up Highway 400, it's only 35 or 45 minutes outside of the GTA, so therefore it provides a facility in south-central Ontario that can also be competitive to draw tourists to this area.

If we look at the regional impact, we expect to draw over 331,000 people in the first five years. There'll be \$155 million generated in new and indirect regional expenditures. We'll create almost 1,400 person years of new direct and indirect employment. That's in addition to the jobs that we already have at Woodbine and the jobs that we create in the countryside.

In terms of property taxes: for the municipality, \$4.7 million; \$8.9 million to provincial sales taxes; and the federal government will get \$9.5 million in goods and services taxes.

What I want you to know is this is not just a development that will—the issue we have is that we are not in an urban settlement area. It's on the south side of the 401. We're in an area that's considered rural agricultural or a rural area. That's why this legislation will have a significant impact. Unless there is an exemption, it cannot go forward.

We looked at what the impact of horse racing is, because some people question why horse racing is agriculture. Horse racing is agriculture because Mohawk Raceway is the hub of standardbred breeding farms, training centres and horse farms in central Ontario. In fact, with the resurgence of the industry in the last four years, there has been a growth in the number of horse farms within that area. That has had a trickle-down effect. It affects the farmers who grow hay, oats and wheat because they have a market for those products from the horses.

#### 1610

It has also affected the rest of the equine industry across Ontario. The next quote is from the Ontario Reining Horse Association and basically puts it into perspective. It's not just the horse racing industry: "The money has brought in more vets, more facilities, increased the number of farmers ready to plant hay, and more products in the stores. People are making money and spending money. It is healthier for everyone with horses and means a stronger voice for all of us, no matter what kind of horses we've got." That is part of the whole rural economic impact that horse racing does have, and it's been part of the rural fabric.

On the next page is a study that was done by the Ministry of Agriculture in 1996. The numbers have been adjusted to the CPI for 2003. The market area for drawing horses to Mohawk-Woodbine circuit is approximately two hours. If you look at the number of horse farms in that area, almost 30,000 horse farms are being supported by Mohawk-Woodbine racetracks. If you look at the estimated number of horses, it's 188,000. The economic impact, what OMAFRA has identified as the farm gate cost, is almost \$1.26 billion. If you look at the investment in fixed assets, it's \$19.67 billion.

We can translate that back down to what Mohawk has done for the rural economy with just standardbred racing. We have 2,600 unique horses that race at the track. For every horse on the track there are approximately four horses on the farm team. That's a total of 10,428 horses. With the farm gate economic impact, that's \$70.3 million



for Mohawk Racetrack alone. The fixed investments: \$686.5 million. So you can see it does have a huge impact now. We need to be able to grow that industry, and one of the ways of doing it—and what the industry looked at—was making racetracks entertainment tourism destination centres. That's what this development at Mohawk would do.

If we look at environmental protection, we are working with Conservation Halton, the town of Milton, the region of Halton and the Ministry of the Environment with regard to protection of environment and water management issues, including the quality of groundwater. We have our own sewage lagoons. We have plans to create a batch-sequential process where all the runoff on the property that goes into the sewage lagoons would then be used to irrigate the golf course. We would not be using any groundwater to irrigate the golf course; we would be using the sewage lagoon cleansed water for that.

The environmental assessments that had been done and were submitted with the original zoning bylaw have indicated that there are no environmentally sensitive areas on this property or on adjacent properties. However, we are looking—as you can see in the diagram, it's quite broken up, the different woodlot areas on the property. But we would be working to protect and preserve the fish habitats that may be in an intermittent stream that flows through the property; the riparian habitat—that means the salamanders, I found out; the on-site wetlands, as well as the plant species; and some of the wildlife habitats they have—there are a couple of small birds that have nesting areas within it.

If we look at the economic impact, the environmental impacts and the vision of the Greenbelt Task Force, the development on this property would achieve four of their five vision objectives that have been set out:

It protects and enhances the environmentally sensitive lands and natural heritage systems. The green land space that is on the property is not going to be touched; it will remain undeveloped.

It recognizes the region's social, natural and economic needs. Horse racing is a very important factor in the horse farms within that region.

It sustains and nurtures the region's agricultural sector.

Because there aren't any significant natural resources, we don't sustain the region's significant natural resources, but we will provide high-quality and compatible recreational and tourism opportunities for central Ontario.

In terms of goals, we meet three of the five goals that have been identified by the task force:

We will preserve the viable agricultural land as a continuing commercial source of food and employment by recognizing the critical importance of the agriculture sector's prosperity to the regional economy. If you look at an aerial photograph of the town of Milton, in that area there are training tracks across all the farms, because most of them are horse farms. A few years ago these horse farms were going out of business. The only way we can sustain them is to continue to move the industry

forward, and that's what we are attempting to do with this development.

It will sustain the region's countryside and rural communities.

It will ensure the infrastructure investment achieves the environmental, social and economic aims of the greenbelt.

In summary, Mohawk Racetrack plays a significant role in the health and well-being of the standardbred horse racing industry, and it's a significant economic generator for the region. The proposed development will further establish Mohawk as the premier North American destination for standardbred racing and entertainment. The additional uses we are proposing in this development will be complementary to the existing entertainment-gaming uses and will create a unique tourist destination.

On this basis, Woodbine Entertainment is seeking an exemption from the greenbelt legislation, as this property is currently zoned rural. Under the legislation, unless you are in an urban development area, a development cannot proceed.

**The Chair:** Thank you. We have approximately two minutes left; just enough time for one question. Ms Churley.

**Ms Churley:** It's nice to see you again, Ms Holmes. I should confess that when I was Minister of Consumer and Commercial Relations, Ms Holmes was on staff there, and we worked together quite closely on horse racing issues. I must admit I have a bit of a bias, because I became very fond of that community and brought in measures to help support the industry, which you will recall was in a lot of stress at the time.

In such a short time, without going into a lot of detail about this, I'm more interested in the process, because I don't think it's this committee's purpose or mandate to make decisions about exemptions. I'm just wondering what process you've been told is going to happen in terms of your request.

**Ms Holmes:** It's my understanding that with all the consultations that are taking place, recommendations will go forward from these consultations for the regulations to set out exemptions for properties that are not currently in an urban development area, so the criteria of what those exemptions will be and specific properties may or may not be exempt.

**Ms Churley:** So you're here today to make committee members aware of your particular case, but you will be going through that process, which I described as a major loophole, by the way, in the bill. Are you surprised?

**Ms Holmes:** Well, our concern, as we read the bill, is that it does not let anybody know what the next steps are.

**Ms Churley:** So that's one of your problems. You're not sure what the next steps are?

**Ms Holmes:** Exactly. We have no idea how it's going to be proceeding in terms of what will be the criteria, how the consultation will take place on that, and will there be exemptions, or is it going to be just rural area?

**Ms Churley:** I see.

**The Chair:** Our time is up. I would like to thank you very much for taking the time to come.

Mr Hudak?

**Mr Hudak:** I'm sorry to interrupt, Mr Chair. I wish I had time to talk to Ms Holmes; it was a great presentation.

Just following up on Ms Holmes's presentation and the questions by my colleague Ms Churley, could I ask the ministry staff to provide us with the process as to how exemptions will be granted for projects like Woodbine's or others we've heard from? I think this helps us give better input on the legislation. Is it simply through section 8 of the act, or is there another process the minister is going to follow to grant exemptions? Secondly, is it the intention that the minister himself will grant exemptions, or will this be delegated to the municipal level, based on certain criteria? If I could kindly ask that the staff, that would be outstanding and help us a lot.

**The Chair:** Mr Duguid, is this possible?

**Mr Duguid:** I think that's a reasonable request. Maybe I can ask staff. Did you want it in writing?

**Mr Hudak:** Yes, if you could table it with the committee. It just helps us understand where we're going from here.

**Mr Duguid:** Sure. I'll have it for you by the next meeting.

**Mr Hudak:** Great.

**The Chair:** Thanks again, Ms Holmes.

1620

#### PEMBINA INSTITUTE FOR APPROPRIATE DEVELOPMENT

**The Chair:** Our next presenter will be the Pembina Institute, Mark Winfield. On behalf of the standing committee, welcome to the committee on Bill 27. You will have 20 minutes to do your presentation. You can either take the whole 20 minutes or leave some time at the end for questions.

**Dr Mark Winfield:** Thank you, Mr Chairman. I'll try to leave some time for questions at the end. My name is Mark Winfield. I'm program director with the Pembina Institute for Appropriate Development. I'm also an adjunct professor of environmental studies at the University of Toronto.

The Pembina Institute is an independent, not-for-profit environmental research and education organization. It's national in scope, with offices in Ottawa, Toronto, Edmonton, Calgary, Vancouver and Drayton Valley, Alberta. The institute has taken a strong interest in issues related to the environmental, social and economic sustainability of urban communities in Ontario over the past year. It has published two major reports on the subject.

In this context, the institute welcomes the introduction of Bill 27, the Greenbelt Protection Act, as an important first step toward the reform of the land use planning process in Ontario, to curb urban sprawl and promote more sustainable urban development patterns in the

Golden Horseshoe region. The Pembina Institute supports the government's overall approach of providing a pause in the approval of expansions of the urban settlement area in the region while a plan for the establishment of a greenbelt is completed.

The Golden Horseshoe region has been subject to intense development pressures as a result of the concentration of population and economic growth in the region. Unfortunately, the dominant development pattern in the region has been one of low-density urban sprawl on to prime agricultural lands and ecologically significant areas. The consequences of the continuation of these patterns of development in the region are severe.

In August 2002, the Neptis Foundation analyzed and offered projections of the impact of the land use, transportation and infrastructure implications associated with the continuation of business-as-usual development patterns in the region over the next 30 years. You'll find in the brief a table that actually summarizes the Neptis Foundation's findings. It highlighted the rate of loss of agricultural land at the rate of about 3,000 hectares a year, a likely quadrupling of the costs related to traffic congestion, a 42% increase in transportation-related greenhouse gas emissions, the decline in transit use relative to automobiles, and estimated infrastructure needs in the range of \$77 billion to support these development patterns.

In this context, the establishment of a greenbelt in the region has the potential to limit these sprawling development patterns and encourage the redevelopment and strengthening of existing communities. Significant population growth is anticipated in the region over the next 30 years. Research completed by the Neptis Foundation indicates that this population growth can be accommodated on lands already designed for urban development in official plans within the region at relatively low densities.

The implication is that there is no need to expand the existing urban settlement area in the region to accommodate the projected population growth. Indeed, if development occurs at slightly higher densities than it is occurring now, then it would be possible to add lands that are currently designated for urban development to the greenbelt and still accommodate the projected population growth, without having to go to high-rise development patterns.

The institute's comments on the bill are focused on two areas, one being the scope of the greenbelt study area and the second being the status of major infrastructure projects that may affect the greenbelt initiative and its underlying goals.

The limitations placed on municipal planning powers within the greenbelt study area established by Bill 27 are an important first step in the planning process, but it is also important that steps be taken to ensure that other actions by local and provincial agencies during the study period do not undermine the goals of the greenbelt initiative. Provincial transportation initiatives, in particular highway extensions and expansions, as well as the



development of large-scale sewer and water infrastructure, can have a major influence on development patterns.

The previous government, through its SuperBuild Corp, initiated a program of 400-series highway extensions throughout the Golden Horseshoe region. You'll find a map attached to our brief which actually shows these projects and their status. This was prepared by the Pembina Institute and the Neptis Foundation in conjunction with the cartography office at the University of Toronto and provides information on their planning, approvals and construction status as of last month. It's important to note that all the projects would run through areas that have been identified by the government as potential elements of the Golden Horseshoe greenbelt.

In addition to their direct impacts on important ecological features like the Oak Ridges moraine and the Niagara Escarpment, the projects are already encouraging leapfrog development well beyond existing urban areas and the boundaries of the government's proposed greenbelt. This problem has been particularly evident, for example, in the recent proposals for very large-scale residential developments in the area of Bond Head to Bradford along the path of the proposed 404-400 Bradford bypass in Simcoe county. That's roughly in the centre of the map. It's marked in yellow.

Despite the challenges presented to the government's greenbelt initiative by these projects, planning and approvals processes in relation to them are continuing to advance. For that reason, we are recommending that the bill be amended to add a clause placing planning and approvals for extensions of 400-series highways, expansions of the capacity of existing 400-series highways, and extensions or expansions of municipal roadways of equivalent size—that means four lanes or more—in the greenbelt study area, identified in schedule 1 of the bill, in abeyance during the greenbelt study period.

A similar provision should be added regarding the approval of extensions or expansions of sewer and water infrastructure beyond existing urban settlement areas in the greenbelt study area except where such infrastructure is required to service existing dwellings in the study area.

The greenbelt study area is defined by schedule 1 of the bill. Schedule 2 provides that the restrictions on applications for and approvals of bylaws, official plans, official plan amendments and plans of subdivision do not apply to a number of areas, including the Niagara Escarpment planning area.

The Niagara Escarpment is central to the ecological integrity of the region, and there are significant development pressures within the planning area. For this reason, we believe that schedule 2 of Bill 27 should be amended to remove the reference to the Niagara Escarpment planning area.

Significant development pressures are also emerging in areas immediately beyond the greenbelt study area to be established by Bill 27. These potential developments highlight the possibility of leapfrog low-density urbanization in response to the initiative. Such development

patterns would defeat the underlying purposes of the greenbelt initiative of containing urban sprawl in the region.

These development pressures are particularly acute in Simcoe county. I believe that last week the Neptis Foundation released a report on the planning situation in Simcoe county. For these reasons, we're recommending that schedule 1 of Bill 27 be amended to at least include the southern portion of Simcoe county.

The Pembina Institute welcomes Bill 27 as a first step toward the development of more environmentally, socially and economically sustainable urban communities in the Golden Horseshoe region. The institute looks forward to the completion and implementation of the greenbelt protection plan and other measures proposed by the government, including the reform of the Planning Act, the Ontario Municipal Board appeal process, and the provincial policy statement made under the Planning Act, all of which are needed to make this vision a reality.

I'd be happy to answer any questions that members of the committee might have.

**The Chair:** We have approximately three minutes each left. I'll go to the government side.

**Mr Arthurs:** I have a question with respect to the infrastructure. You were commenting on things like water and sewers, and 400-series highways. Acknowledging that not all of the growth in this area is going to occur within the boundaries of the city of Toronto for all practical purposes, does it make sense to take advantage of existing infrastructure capacity, even if it means going outside an urban envelope in some fashion, as opposed to developing an area where you're going to be required to put in the expanded 400-series highways and brand new water and sewage treatment facilities?

**Dr Winfield:** What we're saying is, hold on expanding that infrastructure during the planning period. Our assumption is that, for the most part, one will try to build on places where infrastructure exists. That's essentially part of the goal of containing sprawl. But our concern is that as these projects are continuing—and they're expanding, as you can see on the map—outwards from the existing urban area and right through the areas that are proposed for a greenbelt and beyond them, you run the risk that the infrastructure in effect becomes the plan. What we're saying is that really the infrastructure should be following where, as a result of the greenbelt planning initiative, things like the government's growth management initiative, we make decisions about where we want to focus the growth and then we move the infrastructure in support of that. All we're saying is that until that planning process is complete, these things should go on hold. Then we can pick up the question of, do these investments then still make sense, because there may be certain assumptions built into these about where growth would occur that may not be valid once these planning exercises are completed.

1630

**Mr Arthurs:** But you would want to capitalize on existing infrastructure?



**Dr Winfield:** Absolutely, where it exists. Our concern is that a number of these projects that we show on the map are complete greenfield extensions. They're not building on existing capacities and those kinds of things. Clearly, those are the things we need to do if we're going to develop more sustainable communities in the region.

**The Chair:** I will go now to the official opposition.

**Mr Hudak:** Thank you to the Pembina Institute for their presentation today. I'm just following up on your point with respect to the Niagara Escarpment plan, the act and schedule 2. Let me take it a step further. After this bill, if passed, the government will have to start planning a long-term solution. You've got the Niagara Escarpment act, you've got the Oak Ridges Moraine Conservation Act and local planning initiatives. What's your advice on the ultimate governance model and reconciling different pieces of legislation?

**Dr Winfield:** There are a number of possibilities. The government's own platform references a greenbelt commission as the holding body. I think it would make more sense, in the case of the Niagara Escarpment, to leave the institutional structure that's there in place, the commission. The plan—there was a review conducted and it's due for revision anyway, and that needs to be integrated.

The idea of a greenbelt commission has a certain cachet to it. It really becomes a question of how firmly the government wants to build into the planning structures itself a plan and land use planning restrictions. If you have relatively clear rules built into the legislation, the ultimate version of whatever this greenbelt plan takes, then you may not need a commission. It may be that simply the course of bodies like the Ontario Municipal Board and their role in overseeing implementation of the Planning Act may be able to carry out some of those functions. That assumes a certain amount of reform in terms of the role of the OMB as well. So I wouldn't take it that *prima facie* there's a need for a commission.

We know in the case of the Oak Ridges moraine that it already seems to have been working reasonably well with the plan put in place by the previous government. So far it seems that things are rolling reasonably smoothly, partially because the rules about the moraine are now set relatively clearly in legislation in the plan.

**Mr Hudak:** What's your advice for the role of the minister once the ultimate greenbelt is established? What role should the minister's office or cabinet play vis-à-vis local municipalities under Planning Act reform etc?

**Dr Winfield:** I think one does not necessarily want to see interventions into local planning decisions on a regular basis, so I think the province needs to speak through policy. It doesn't want to be intervening on a case-by-case basis. So in terms of land use, you want to have a relatively clear set of rules which then could be left to be implemented by the municipalities and enforced by a reformed OMB and those kinds of structures.

I think where the role of the cabinet becomes more important is on the issue of infrastructure funding and in directing where we then want growth to occur because it

becomes critically important that we make sure that the province's infrastructure investments, be they in transit, roads or sewer and water, reinforce the directions that are trying to be set through the overall growth management plan for the region. So they need to be saying to municipalities, "Well, if you want money for transportation or for sewer and water, then you need to be demonstrating how what you're proposing to do lines up with the overall plan," which you assume seeks to contain urban sprawl, preserve agricultural land and all those kinds of things.

**The Chair:** I'll move on to Ms Churley.

**Ms Churley:** Thank you very much for your presentation. I was particularly struck by your comment about leapfrog development. You said that such development patterns would defeat the underlying purposes of the greenbelt initiative of containing urban sprawl in the region. There was this article that came out in the Star on May 30; developers pressed their case north. I wonder if, in the very little time we have, you could expand a bit on it. I've been raising this for some time and it's my biggest concern, I believe, with what's missing from the legislation before us. What are your concerns about leapfrog development?

**Dr Winfield:** I think the proposal that was written up in the Star yesterday around the Bond Head development is a very, very good example. Essentially what you've got happening is—and this is a concern which is raised around urban containment boundaries and greenbelts generally—if you don't design it as part of a larger package of reform around land use planning, you can have the effect of providing perverse incentives and causing developers to just go farther and farther out. That's a problem from a number of perspectives. It's a problem in the sense that it means in this region you're almost certainly moving on to class 1, or specialty cropland. It's a problem in terms of infrastructure provision and the costs. It's a problem in terms of the transportation-related air pollution and greenhouse gas emissions. It just piles on. In a sense, it puts the sprawl problem on steroids. In effect, you're disconnecting the sprawl from the existing communities, so you undermine your goals in terms of preserving agricultural land and trying to produce communities that are less automobile-dependent, reducing air pollution associated with urban growth, these kinds of things.

This is the reason we're making the suggestion that the planning area itself needs, in the short term, to encompass a wider geographic scope, particularly in the places where these development pressures are acute. But it also speaks to the question that in the longer term the greenbelt is not the complete answer to the land use planning problems in the region. It's clear that you need Planning Act reform. You need a revised provincial policy statement. You may need other forms of provincial interventions around agricultural lands as well.

This is just one piece of the puzzle, and if it's allowed to stand alone, then you do run this risk of leapfrog.

**The Chair:** Mr Winfield, our time is up. Thank you for taking the time to come and present this afternoon.



## OAKVILLEGREEN CONSERVATION ASSOCIATION INC

**The Chair:** The next group is the Oakvillegreen Conservation Association Inc, Mr Hank Rodenburg. On behalf of the standing committee on general government, I would like to welcome you to this public hearing.

**Mr Hank Rodenburg:** Mr Chairman and members of the committee, my name is Hank Rodenburg. I'm representing Oakvillegreen Conservation Association Inc. Thank you for allowing me the opportunity to make some comments on Bill 27. It seems appropriate to do this during Canadian Environment Week.

First of all I'd like to tell you briefly who we are and what our aspirations are. Oakvillegreen Conservation Association was incorporated in July 2000 by a few Oakville residents who became increasingly concerned with the growth plans for 7,600 acres of agricultural land in north Oakville that had been declared urban by the regional municipality of Halton in 1999. They were concerned with the unrestrained development in Oakville and the GTA, continuing urban sprawl, the effect on our deteriorating air and water quality, traffic gridlock, the loss of green space and the shrinking habitat for plants and animals with which we share this planet.

Since that date, Oakvillegreen has grown and become very active in raising awareness in the community and at the regional and provincial levels in regard to these issues. Oakvillegreen worked hard to try to create a town official plan amendment for north Oakville that would firmly establish a sustainable natural heritage system consisting of significant woodlands, wetlands and open space, complete with the necessary linkages and buffers, before it would start any detailed urban planning in its secondary plan.

Oakvillegreen appealed the town's official plan amendment, OPA 198, to the Ontario Municipal Board because it felt strongly that the amendment did not clearly define the protected areas and did not contain the strong policies that were necessary to protect the environment in general and enhance our quality of life.

The province, through the Ontario Realty Corp, owns 1,100 acres of the 7,600 acres scheduled for further development in north Oakville. It is known as the ORC land or the Oakville land assembly. With the assistance of our dedicated member of Provincial Parliament, Mr Kevin Flynn, Oakvillegreen has lobbied the government to preserve this land in perpetuity by donating it to Conservation Halton and has submitted approximately 4,000 signatures from residents in support of this effort.

My reason for being here today is not to promote Oakvillegreen and its activities but to speak in support of the proposed Greenbelt Protection Act, to share with you some of our thoughts and submit a plea for your help.

We were very excited when this bill was introduced in December 2003 and wholeheartedly agreed with Minister Gerretsen when he said:

"Our economy cannot thrive if goods and services are stuck in gridlock. Our families cannot thrive if parents

are stuck on the highways and there is no green space left to enjoy. Our environment will not thrive if development is unfettered and irresponsible....

"Too often developments got the green light where communities did not want them, could not sustain them, and subsequently regretted them. This form of urban planning only encouraged urban sprawl and is simply not sustainable."

### 1640

An attitude survey was conducted by Ipsos-Reid for the regional municipality of Halton in April 2004. It concluded that "the key top-of-mind regional priorities are growth management and the interwoven tandem issues of transportation and the environment."

Participants indicated that the green space, waterfront, parks, escarpment, wildlife, forests, ravines, conservation areas, "open spaces" and "the country beauty across the region" combined to be the key analogous assets to their quality of life in the region.

They also stated that "our beautiful farmlands" are a key element of environmental aesthetics that must be preserved—for their visual impact, growth-inhibiting impact and their role as a source of food for the region.

Oakvillegreen agrees with the purpose of Bill 27 to create a moratorium on development within the study area to permit adequate time to study future greenbelt applications. Oakvillegreen strongly supports the vision and goals as stated in the May 2004 Greenbelt Task Force public consultation document, particularly the ones related to the protection of the environment:

"providing green space between, and links to, open spaces within the region's growing urban areas;

"protecting, sustaining and restoring the ecological features and functions of the natural environment;

"preserving viable agricultural land as a continuing commercial source of food and employment by recognizing the critical importance of the agricultural sector's prosperity to the regional economy."

Oakvillegreen joined with 50 other environmental groups to create the Ontario Greenbelt Alliance and fully endorses their submission to the committee.

Many studies similar to this greenbelt study have been done in the past, with limited or no results. Oakvillegreen sincerely hopes that this study will receive the attention it deserves and will lead to the future actions it needs.

We also believe that this laudable initiative by itself will have little success if it is not supported by similar desires and coordinated actions on the part of the federal government, the provincial government, the regions and the municipalities.

A visionary greenbelt connecting the Niagara Escarpment to the Oak Ridges moraine, Algonquin Park and ultimately to the Adirondack State Park is a terrific concept, but only if the space between this greenbelt and Lake Ontario is not paved over in our endless pursuit of more urban sprawl. If we need a car to drive from Oakville in order to reach this greenbelt, we will defeat some of its objectives. Trees in the greenbelt may not be able to absorb some of the air pollution created by cars



stuck on the QEW. It is therefore imperative that we protect additional green spaces within our municipalities where people can walk or cycle to. We believe that most of the initiative to identify and preserve such areas has to come from the individual municipalities with the full support of the province.

Oakville has undertaken such an initiative. With the assistance of the planning departments of the province and the region and with the expertise of the Ministry of Natural Resources and Conservation Halton, Oakville has conducted one of the most extensive and detailed environmental studies of these 7,600 acres of land in north Oakville ever conducted. The result of this study was the identification of a 2,200-acre natural heritage system consisting of core preservation areas and natural linkages.

In addition, Oakville invited one of the foremost urban renewal planners in North America to hold a one-week charrette in Oakville to create a vision of what a compact, comfortable, cohesive and walkable community should look like.

Oakvillegreen has supported this process, and although we believe that the natural heritage system may still need additional work to ensure that buffers and linkages are wide enough and to minimize road crossings and although we are disappointed that all of the Trafalgar moraine may not be protected, we think that, overall, we are on the right track.

The proposed north Oakville secondary plan will be presented to council in the very near future. It could become a blueprint of a responsible and sustainable planning process. We would hope that the province will fully endorse it by saying, "Here's an example of what this greenbelt vision is all about; let us together make it into a reality." And we trust it will stand by its recommendation to protect this valuable resource in Oakville.

The developers have already submitted their own plans for this area, and we fear that this will wind up where it usually winds up—at the Ontario Municipal Board, where a battery of lawyers and scientists will battle each other while wasting the taxpayers' money.

Mr Gerretsen stated in his address to local municipal officials in Burlington on April 22, 2004, "It is up to us to give you the autonomy, power and tools and, yes, the money to chart your community's future." So we come with a plea for help from Oakville and other communities in the GTA.

We believe that as part of, or concurrent with, the Greenbelt Protection Act and in support of those communities that want to plan proactively to meet the visions and goals of the act, the government needs to implement the following initiatives:

(1) To show its commitment to the vision and goals, the government should declare that all lands it currently owns within the greenbelt study area will be protected in perpetuity as environmental preserves. This will give a clear signal to all landowners that the burden of environmental protection will be shared with the taxpayers who ultimately own those lands.

(2) The moratorium on any changes or approvals of bylaws regarding lands outside the urban areas should be extended to include those lands that have been declared urban but where detailed zoning has not yet been approved. It would seem reasonable to us to delay these plans until the greenbelt study has been completed. In Oakville, current planning is at a stage where such a delay would be prudent and warranted.

(3) Accelerated implementation of the recommended changes to the rules for the Ontario Municipal Board: Bill 26 is a good start but does not adequately address the concerns and recommendations made by the task force. Municipalities must have the authority and flexibility to chart their own future. It is a waste of scarce human and financial resources to have even minor planning decisions second-guessed by such a board.

While these changes are being implemented, any hearing before the board that involves major land use planning in the greenbelt protection area should be stayed at least until the study has been completed.

(4) Changes to the Development Charges Act: Mandatory discounts on development charges should be eliminated in order that municipalities can be empowered to determine who will be carrying the capital burden for new growth.

Development charges are currently largely determined by comparing them to the average cost of the last 10 years. That's like driving forward while looking only in your rear-view mirror. It stifles new and progressive thinking and planning and is one of the major reasons that so many good initiatives, for instance on mass transit, are shelved because it would create an unreasonable burden on the local taxpayer.

(5) Mass transit: I would like to quote to you from the introduction in a transit study commissioned by the region of Halton in October 2002. It says: "Halton region has reached a critical crossroad. The region can continue to attract people and jobs by providing the infrastructure and tools necessary to sustain and augment the quality of life of its residents and economic vitality of its businesses, or risk future economic stagnation due to growing pressures on a transportation system that is ill-equipped to deal with future travel demands."

GTA-wide studies suggest that the average commute could lengthen by 50% within the next 20 years, which would add an estimated \$8 billion per year in congestion cost, as well as claim the lives of 2,500 people who will die prematurely due to poor air quality.

Oakville is ready to adopt an aggressive transit policy, but it needs the co-operation of and funding by the region and the province.

The gasoline tax rebate to municipalities is a good start and will have a significant effect, but it's not sufficient by itself. We need:

A moratorium on any major road expansion proposal until the greenbelt study has been completed and a GTA-wide transit and transportation plan has been formulated;

A detailed study on alternatives to the current methods of transporting goods, and this should involve the eval-



uation of increased rail transport and the strategic locations of intermodal rail facilities, as well as an assessment of the principle of just-in-time delivery of products, which has caused many additional trucks to travel our highways half full, causing "just a little more" air pollution;

Tax incentives for the purchase and use of fuel-efficient cars—no GST or PST on hybrids and/or tax penalties on vehicles with high-fuel consumption;

Stricter emission guidelines for all vehicles—if California can do it, so can we.

1650

Oakvillegreen is very supportive of the goal to preserve our agricultural lands. Ontario is blessed with a huge capital asset: our prime agricultural lands, which produce some of the best fruits and vegetables on this earth. The value of this asset will increase considerably once people realize that the food we eat and the wine we like to drink should be produced locally. We will come to realize that eating tasteless strawberries imported from California in February and eating Chilean-grown grapes, which may have been sprayed with unknown chemicals is not smart thinking, and increasing transportation cost will hopefully assist in this trend. We, therefore, need to carefully nurse this asset and protect it under provincial and federal legislation.

I would like to share with you a Jewish folk wisdom: Two men were fighting over a piece of land. Each claimed ownership. To resolve their differences, they agreed to put the case before the rabbi. The rabbi listened but could not make a decision. Finally he said, "Since I cannot decide to whom this land belongs, let us ask the land." He put his ear to the ground and straightened up. "Gentlemen, the land says that it belongs to neither of you, but that you belong to it."

In summary, I would like to state once more that Oakvillegreen is fully supportive of the intent and spirit of the proposed Greenbelt Protection Act and applauds the government for taking fast action on this initiative. It will not be an easy task. It will require changes in perceptions, priorities and principles. However, if there is genuine will, we can accomplish positive change. Oakvillegreen is ready and willing to assist in any way we can.

Let us remember the words of J. C. Sawhill, who was the president of the Nature Society, 1990 to 2000: "In the end, our society will be defined not only by what we create, but by what we refuse to destroy." Thank you very much.

**The Chair:** We have time for two questions only. The first one is from Mr Hudak, the official opposition.

**Mr Hudak:** Thank you very much for the presentation by Oakvillegreen. Just a quick question for you. Obviously you're justifiably proud of the work that's been happening in Oakville and the support of your local MPP.

**Mr Rodenburg:** Absolutely.

**Mr Hudak:** A couple of aspects of the bill deal with the minister's authority and the Lieutenant Governor in

Council or cabinet's authority to make exemptions as to definition of "urban use," for example, or "urban boundaries." As advice to the committee, do you like that approach? Do you like the approach to be more local in nature, subject to provincial rules? What's Oakvillegreen's comfort level in addressing exemptions and changes in definitions?

**Mr Rodenburg:** I think basically that municipalities should be able to start the initiatives with the support of the government. However, before that can be done, there must be some guidelines and rules set up, which means there must be an overall plan. Unless we have an overall plan for the whole GTA, the municipal initiative will not work. We must start with the overall plan. That's what I hope this initiative with the greenbelt will start, so that we have an overall plan where development will occur, where the transportation hubs will be and then let the individual municipalities do their own work through those priorities and through those policies.

**The Chair:** I'll go on now to Ms Churley.

**Ms Churley:** Thank you very much for your great presentation. You are a true visionary. It's nice to have you here. I liked your quotes and I think you make some very reasonable suggestions and recommendations. I wonder if you could make a brief comment. My theme of the day is leapfrog development, so-called. Do you have concerns about that and recommendations?

**Mr Rodenburg:** I think leapfrog development would be one of the worst things that could happen, because it would basically negate everything we're trying to do here. I'm not sure how you can prevent it. I know it's an issue and we're all thinking about it. I think it's good that we are thinking about it. We have to set up some rules as far as the leapfrog development. We must start with the infrastructures that we have and what we know.

**Ms Churley:** Thank you. I agree with you on that.

**The Chair:** Mr Rodenburg, you made a very good presentation. It was a great one. Thank you once again.

1650

## ONTARIO SEWER AND WATERMAIN CONSTRUCTION ASSOCIATION

**The Chair:** I will now call on the Greater Toronto Sewer and Watermain Contractors Association, Mr Sam Morra. On behalf of the committee, welcome to the standing committee on general government. You have 20 minutes. You can take the whole 20 minutes or leave some time at the end for a question period. You can proceed now.

**Mr Sam Morra:** Good afternoon, Mr Chairman and all members of the standing committee on general government. My name is Sam Morra, and I'm the executive director of the Ontario Sewer and Watermain Construction Association. We're an active association. We represent more than 700 companies. Our members supply and install the vast underground network of pipes that bring clean water to and take dirty water away from the

residents and businesses of Ontario. For over 33 years, this association has been representing the industry.

Our members work on the front lines of the industry, and we've been very active in the area of provincial policy-making. The OSWCA was a major force in the creation of the provincial water protection fund to help municipalities deal with the provincial transfer of water and waste water services. We were also very active participants in the Walkerton inquiry and continue to lead the campaign for full cost pricing and accounting for water and sewage services.

Ontario's challenges of managing growth cannot be underestimated. The Golden Horseshoe, in particular, is a magnet for growth and has in fact outpaced the rest of Canada by a margin of three to one. Much of this growth is fuelled by immigration, estimated to account for as much as 60% of our new population growth. As is widely supported by noted economists and municipal experts, the GTA and Hamilton will grow by an additional 2.5 million people over the next 25 to 30 years. In addition, 1.3 million jobs will be created.

The OSWCA has always advocated that there is a strong role for government in balancing growth with a myriad of public policy issues, including maintaining an efficient land use pattern, ensuring appropriate and modern infrastructure capacity is in place, protecting significant environmental areas and providing sound economic development opportunities for all Ontarians.

We have long been partners with the land development industry. Many of our members work side by side in growing our communities. In many ways, we are already one of the most regulated and supervised sectors in Ontario. Your own discussion paper from your task force acknowledge that growth and development have been quite well managed in this province. Ontario has achieved higher urban population densities and housing concentrations when compared to major US cities and is in fact approaching other cities such as London and Paris.

It is our contention in this presentation that to meet the government's clear objective of creating sustainable urban areas, there must be a more holistic vision for this process.

An urban area which offers a balance of housing, employment, transportation, social and recreational choices and opportunities will be the most successful in attracting a wide demographic variety, which will enhance long-term prosperity for the region. This approach will, for my industry, ensure that we are working in a focused way with government and our development industry partners to build the Golden Horseshoe and make it prosperous and sustainable for the future.

Respectfully, we are concerned that this bill signals that the government may be headed in the opposite direction and moving back to the piecemeal planning that has put us in this situation in the first place.

Our concern is that Bill 27, on its own, is lacking a correlating land needs and infrastructure strategy. I understand that there is some movement in government toward a growth management plan. This was mentioned

in your recent budget. But that vision for planning is not entrenched in legislation; this small component of that growth and vision will be if this bill is passed.

I want to lend support to my colleagues in the development industry when they contend that this bill may significantly impact the supply of housing and employment lands. This will lead to a rise in land prices, a further escalation in the cost of new and resale housing, and may jeopardize Ontario's economic prosperity and competitiveness relative to other Great Lakes states.

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My association would contend that the regime in Ontario governing land use is by far one of the most regulated and comprehensive public processes on the North American continent. The government says that it wants to develop a big-picture policy approach to land use, environmental and strategic infrastructure policy. The question this committee needs to consider is whether this legislation, in establishing the greenbelt, actually will effectively facilitate the future growth management exercises that the government indicates will flow from this process.

I want to take you through some of this province's historic approaches to planning and also raise some relevant questions about whether or not this legislative tool will allow Ontario to meet its future needs, in hopes of giving this committee some additional perspectives from my industry.

Let me speak briefly about the recent history of land use planning in Ontario. In the late 1980s, the combination of a surge in new housing demand and an inadequate supply of serviceable land in the GTA led to a significant rise in housing prices, both new and resale, as a result of low inventories. In an effort to bring equilibrium to the marketplace, in 1989 the David Peterson government introduced the Land Use Planning for Housing policy statement that contained policies requiring official plans to ensure a 10-year supply as well as a range of housing types.

This approach was adopted by the NDP in their comprehensive provincial policy statement in 1994. When the provincial policy statement was amended in 1997, during the Conservative administration, it was recognized that the longer-term view of land supply—a 20-year view—was warranted to respond to the dynamics of the economy. Now the provincial policy statement is being reviewed again, and Bill 26 is bringing further change to make this statement binding on municipalities—another strong and effective tool.

What is the lesson from this? It is that the adequacy of designated land is a key public policy issue and an economic issue that cannot be ignored. It has caused governments of all stripes to respond in order to ensure a balanced marketplace in terms of affordability and the provision of a range of housing types. In my industry, it has meant that we have been able to work closely with municipal governments and industry to maximize the efficient provision of water and sewage infrastructure. It allows my members, especially those focused on devel-



opment, to plan. I think all members of this committee can understand how critical that is for my members and their companies. I think you can also understand how a movement away from this planning approach would have them concerned.

Our association wants to be clear that this committee understands the impacts of this bill on meeting Ontario's future needs. It is clear from your Greenbelt Task Force that you acknowledge a new approach to transportation and infrastructure and recognize the related future needs of the province. The task force also understands that this should not be done in a vacuum. It begs the question for the OSWCA as to whether this is putting the cart before the horse.

Perhaps what might be more appropriate before this bill proceeds to third reading is that the government's critical work in the area of growth management be completed. Perhaps before this greenbelt is imposed, the province should be making sure that this move will meet its long-term needs, especially in the context of housing and employment lands. A work of this nature will ensure that the region's needs for designated urban lands are properly defined. Since this bill does not contain a statutory review process, future environmental, social and economic interests cannot be easily accommodated.

Let's recall what our municipalities must currently do when considering an urban expansion. They already prepare exhaustive studies, they have to prepare official plan amendments, and these studies take years from start to finish. We clearly understand the desire of the government to establish a greenbelt, but we would encourage caution and the completion of the processes that have already begun in the development of a comprehensive growth management strategy. The need to include some future urban areas to accommodate the explosive growth in these regions is vital.

This government is also deeply involved in planning and regulations around source water protection. This will clearly be a major component of the future growth management strategy. For my industry's water and wastewater management issues, this government will clearly influence the development of the infrastructure corridors that we produce and maintain, corridors that will have to cross and intermingle with the boundaries of the proposals in this bill.

What does this mean for the sewer and water industry if this bill passes now, as written? Please understand that if this government moves forward, it is the view from my industry's perspective that there are some serious questions about the ability of our existing towns and cities to accommodate growth within their boundaries due to the current major infrastructure deficit that exists. There is some \$12 billion of infrastructure deficit that needs to be addressed over the next 15 years.

The government wants cities in the Golden Horseshoe to accommodate explosive growth over the next 15 to 25 years. It has been clear in the Strong Communities plan that urban intensification is a major initiative for the government. We don't disagree with that approach, but

we're also waiting to see what happens with the regulations surrounding full-cost pricing in the O'Connor report. Without these rules around dedicating revenues and moving water prices to more appropriate levels, the Golden Horseshoe areas affected by this bill may not have the capacity to grow as the government hopes.

The land development and infrastructure construction industries play a vital role in the economy of Ontario. We at the OSWCA understand clearly the policy intentions of this government. We clearly understand the desire of the government to establish a greenbelt and to move forward on its campaign commitments, but we would encourage caution and would encourage the government to delay passage of this bill until the completion of the processes that have already begun in the development of a comprehensive growth management strategy and a long-term capital plan for Ontario. These need to include some future urban areas to accommodate the explosive growth in these regions.

We think that complementary to this notion is a provincial strategy that accommodates population and employment growth in conjunction with well-established infrastructure and transportation plans. We would encourage this government to get all of the pieces of this puzzle in place before moving forward. We at the OSWCA are committed to advancing this planning process.

Thank you very much for the opportunity to address the committee today. I'd now like to turn the podium over to Mr Ira Kagan, who will speak to you about a couple of specific incidents where the proposed bill will result in inefficiencies in existing infrastructure utilization.

**Mr Ira Kagan:** I will be brief, because we both want to leave time for questions. My name is Ira Kagan. I'm with the law firm of Kagan Shastri. The message I want to send to you is, first, that urban growth is not all bad, and second, that there are valid purposes in a greenbelt and when you apply those valid purposes, you'll get efficient results.

Why do I say that all growth is not bad? Maybe it's trite to say this, but badly planned growth is bad; well-planned growth is good. Most of us wouldn't be living in the houses we're living in and enjoying what we have now if it weren't for well-planned growth. Many parts of Canada, the US and the world would envy the problem we have: a need for growth. They would envy, for example, the economic prosperity we enjoy. They would envy the affordable housing we enjoy. They would envy the need that employers have for more people to work and the fact that there are more employers in the GTA. They would envy all of these things.

How does that all fit in with the purpose of a greenbelt? Why do we want greenbelts? Why is this important? One reason, of course, is to protect important environmental features, and the government already does that by virtue of the Oak Ridges Moraine Protection Act and the Niagara Escarpment plan. These are worthwhile initiatives.

The other purpose of a greenbelt is to contain growth. You can't exceed growth outside the greenbelt. The greenbelt represents the limit of growth. Why do we want to contain growth? You want to contain growth so that you make more efficient use of public funds, private funds, transit, libraries, schools, parks and infrastructure. Why is that important? It's important because the less money we spend on infrastructure, roads and schools, the more money we have to do other things, like health care, or to enjoy quality of life. The more efficiently we are able to build communities, those cost savings get passed on to homeowners. More people are able to afford homes. That's a worthwhile thing.

Keeping all that in mind, how does this play out in the real world? I want to use Pickering as an example, and Mr Melymuk spoke of this earlier today. If you look at Pickering, you've got two areas that are part of their growth management study, Seaton and the agricultural assembly, and they're next to each other. In the agricultural assembly you have—and we handed out to you earlier today a chart that gives you an idea of existing infrastructure in the assembly—\$80 million. We don't have a chart to show you the existing infrastructure in Seaton, because there wouldn't be a chart. It would be precious little. So you have \$80 million in the ground already in the agricultural assembly; virtually none or by comparison none in Seaton.

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So the city of Pickering begins a growth management study, and they don't just say to themselves, "I'm only going to look at the agricultural assembly because there are services there." They look at everything. They do a comprehensive study and consider areas where there are services and where there are no services. They do an environment-first approach, and they say to themselves, "We're going to protect the environmentally sensitive land first." They realize that when they do that, Seaton has more environmentally sensitive land than does the assembly. So if you can't fit all the people you need within Seaton because you want to protect the environment, where else are you going put them? It only makes sense to put them in the areas where you already have the services.

The city of Pickering has undertaken an extremely comprehensive plan, a well-thought-out plan. There may be areas that we would all disagree with, but you have to respect their process as being all-inclusive. What it does is it tries to capitalize on existing services in the ground while at the same time protecting environmentally sensitive land. The government has stated on numerous occasions their commitment to respecting the local decision-making process, to treating them as a full partner. I think everybody recognizes that nobody can know the citizens of Pickering as well as the city of Pickering. They've already held an election on these very issues and they've gotten the mandate they deserve. The difficulty with Bill 27 as it is currently drafted is it ignores that process. It, in some ways—and I hate to use this word—disrespects the process, because it doesn't

even accommodate the work that has been done by Pickering. Mr Melymuk has asked, for example, that at the very least the work done by Pickering not be wasted and be rolled into the greenbelt process, and I would encourage that.

In a presentation that I've given Ms Grannum, I have at tab 4 a proposed amendment to the bill that would allow this very thing to occur, and I would ask that the committee members read it. That presentation is also on a different topic, one that I was supposed to speak on today, but somehow my name was removed from the list. It was dealing with the revised changes to the Oak Ridges Moraine Conservation Act, the transition provisions. I have proposed amendments in there as well. If you have time, please read it.

**The Chair:** I have enough time for one question.

**Ms Churley:** There's not very much time to respond. Mr Kagan, I just wanted to ask you—I'm not clear on who you're representing here today. You say you're a lawyer, right?

**Mr Kagan:** Yes.

**Ms Churley:** Are you with the north Leslie landowners in any way?

**Mr Kagan:** That is another set of clients of mine, but that's a different presentation I've handed in. I haven't spoken about that today.

**Ms Churley:** I see.

**Mr Kagan:** Today I'm here on behalf of the sewer and watermain association.

**Ms Churley:** I just wanted to clarify that you are also the lawyer for one of the north Leslie—

**Mr Kagan:** I have three clients in north Leslie, yes.

**Ms Churley:** OK. What are your concerns about my theme of the day, and that is leapfrog development, in the context of everything we're talking about here today?

**Mr Kagan:** I think it goes hand in hand with my principal theme, which was that badly planned development is bad and well-planned development is good. If you're going to leap over areas that you consider to be untouchable just to invest more money in more expensive communities even further away from the jobs and the schools and the concentration of existing population, how can that be good? How is that a good use of public funds? The answer isn't, in my opinion, to just enlarge the greenbelt area so it goes all the way up to, say, North Bay. The answer is to have a proper greenbelt area that recognizes the needs for additional growth and concentrates them in the right location.

**The Chair:** Very good. Our time is up. Thank you for taking the time to make your presentation.

### SAVE THE ROUGE VALLEY SYSTEM

**The Chair:** The next group is the Save the Rouge Valley System. Once again, on behalf of the committee, thank you for coming down to make a presentation on Bill 27.

**Mr Glenn De Baeremaeker:** Thank you, Mr Chair. I'd just like to thank you for staying here past the



5 o'clock hour to hear depositions on this important issues and to say hello to my own MPP councillor—member Brad Duguid.

**Mr Duguid:** You're the councillor now.

**Mr De Baeremaeker:** I am the volunteer president of the Save the Rouge Valley System. I've had about 18 years of very intensive involvement, both in creating the largest urban park in North America and fighting to protect parts of the Oak Ridges moraine. More recently, I've had the great honour to fill the shoes of Brad Duguid, member for Scarborough Centre; I am now a city of Toronto councillor.

I come here today to ask you to put some very specific amendments into your act. There are 10 of them. I am going to start very specifically and then go to more broad and general recommendations.

Certainly, number one is, I would ask you to include protection of the Rouge Park lands within the act itself, all the way from the Oak Ridges moraine down to Lake Ontario. My understanding as a layperson reading the act is that these lands are not all in the study area. I believe they all should be in the study area. Certainly, as the largest urban park in North America, this should be a foundation for the greenbelt in the east end of Toronto.

I would also ask the committee to give legislative status to the Rouge Park North plan within the ultimate greenbelt act. I say that because the Rouge north plan basically allows development adjacent to the Rouge Park and defines how close you can get or how far you can get to nature features and wetlands to make sure the ecological integrity of the park is protected. Unfortunately, nobody is listening to it, and when we as citizens go to the Ontario Municipal Board and say, "Please protect the environment based on these scientific principles contained within a park plan," the OMB says this plan has no legal status. So we would ask you to give that plan legal status and to put it in the act.

The other way we can do this is by having five or six different municipalities incorporate the plan into their official plans. We've been trying to do that for six years now. I'm afraid it's going to take another six years before we actually get it implemented. The developers are great at doing delaying tactics and appealing things to the OMB, so all the urban development may have already taken place before we get this plan in place. The principles were adopted six years ago, and nobody is listening to that plan yet.

I would also ask you to include the protection of the north Leslie area of the Rouge watershed within the study area and within the act. Your own scientists at the provincial government, under the previous government, identified the vast majority of this area as having provincial significance, with a series of wetland complexes, environmentally sensitive areas, discharge areas and headwater streams. Virtually all the lands in this area are outside the urban envelope. All of them today are outside the urban envelope. We're afraid the OMB will come in and rezone these lands before you get a chance to study them and, we hope, protect them.

I'd like to take issue. I understand that there was another developer who was here who said, "Save the Rouge and us are almost at a settlement at the OMB. You don't need to study these lands." Nothing could be further from the truth. There is Newfoundland and there is British Columbia, and those two places are closer together than the developers and us. We and the developers have a fundamentally different vision of what's happening. I will be polite and say I believe it is not accurate for anyone to characterize our discussions with developers or our activities as directed by the OMB by saying we are close to a deal with the developers. We are a million and a half miles apart.

We'd also ask you as a committee to cancel the OMB hearing or ask the minister to cancel the hearing starting in the north Leslie area. The two chairs of the OMB have, if you will, stepped back from the hearing. There is a new hearing starting. They are debating about it now. We believe that section 6 of the greenbelt act before you allows you to stay and allows the minister to stay the hearing. We think that's what should occur. Virtually all of this area is outside an urban area, and this hearing should not go ahead. You, as the people elected by the people of Ontario, should make the decisions where the greenbelt starts and where the greenbelt ends. We've had a horrible history at the OMB, and have no confidence that they will give the environmental sensitivity and the advice of your own provincial experts the weight that it deserves.

I'd also ask you as a committee to protect the agricultural lands in both Markham and Pickering. These lands have been designated as an agricultural preserve for over 25 years. In this past provincial election, the Ontario Liberal Party promised to permanently protect the preserve and protect 66% of the Seaton lands. The Ontario Liberal Party also promised to stop all housing on the Oak Ridges moraine, and it broke that promise. For whatever good reasons it may have, for whatever reasons it felt compelled to break that promise, the Ontario Liberal Party broke its election promise to stop housing on the moraine. We hope the party and this government will actually keep its promises in terms of the agricultural preserve.

**1720**

The sixth thing I would ask the committee to advise the minister to do is to buy back the agricultural preserve lands sold to developers for \$5,000 an acre. I'm sure every one of us at this table would love to buy lands adjacent to Steeles Avenue, adjacent to the municipality of Toronto or Markham or Pickering, for \$5,000 an acre, and walk in and get it rezoned, thanks to the town of Pickering. Suddenly, your \$5,000 investment per acre has gone up to \$100,000 per acre. This is a billion-dollar rip-off. There was a mistake made by the Ontario government. The Ontario government sold these lands off for as little as \$4,000 an acre, up to \$8,000 an acre.

Now, the same people they sold them to with permanent agricultural easements are knocking on the door and coming to you saying, "Let us build here. It makes a lot



more sense." I say to you, absolutely not. These lands were sold as an agricultural preserve, and I would urge you to buy these lands back at that same price with interest, or to swap them for lands where the developers can build in an urban area but not on a designated permanent agricultural preserve.

For people and organizations to come here to you and say, "Well, look at all the infrastructure we have"—according to the developer scenario, do you know the best place to build in the GTA? High Park, Centre Island, Thompson Park, the Scarborough Bluffs. If you look at the amount of infrastructure around High Park, including the TTC and the subway, that's the number one place to park. In fact, any baseball diamond or soccer field close to the subdivision where you live is the ideal place to build the next set of houses, because that's where the infrastructure is. We have to have a balance, and the balance is an urban boundary that has permanency to it.

I would ask the committee as well to include Toronto in the study area. Again, the Rouge Park, the largest urban park in North America, is excluded from part of your study area south of Steeles Avenue. We have 5,000 acres of protected greenlands which you won't consider because it's south of Steeles Avenue. We also have important areas—the Humber and Don rivers as well—that should be examined. So I think schedule 2 of your proposed act should be amended to allow Toronto to be included.

I would ask you to make the study area larger. I think you'd have to go from Windsor to Ottawa, at a minimum. The area you're looking at today is drastically too small. When we were given direction by Premier David Peterson and Minister of Natural Resources Lyn McLeod to do a Rouge Park study—I was on the advisory committee to the Premier and to the minister of the day—they said to us, "Give us a park south of Steeles Avenue." Our recommendations went to them and said, "Even though it wasn't formally in our mandate, we are recommending you protect all the lands north of Steeles, and you protect them all the way up to the Oak Ridges moraine." That was back in 1990, when we handed in our final report.

So you have to, as a committee, disregard the advice of all the lawyers and all the staff who will give you 50 reasons why you shouldn't act, why you should sit on your hands and do nothing. The spirit and the intent of this legislation is to create a permanent greenbelt. That's what you have to do. It's very obvious to me, and maybe to a lot of you as you go through this exercise, that you can't just put one little dot on the map and say, "There, we've protected this land." I think you have to go from Windsor to Ottawa. I think you have to include the principles of the NOAH project, and I think you're looking at an area of some five million acres of land, not 800,000 acres of land that you're currently looking at.

My last two recommendations are global, but I think also important in terms of the legislation. Make the preamble in the bill part of the legislation. Some of the best greenbelt statements are found within that preamble or purpose of the legislation. Therefore, I don't think—and I

could be wrong—they're considered part of the legislation. I've seen that in a lot of official plans, too. You have these great intentions, great visions, great motherhood statements in the preamble, but when you get to the OMB or when you go to a tribunal or a council, they don't include that; they only include the technical provisions.

So I'd say that the purpose of the act should be part of the formal legislation and that the purpose of the act should include formal legislative authority to the Rouge Park plan, protection of the agricultural preserve in the Seaton lands, protection of regionally and locally rare species, the NOAH concept, and it should state formally that this greenbelt that you're going to create will be part of a larger connected protected green space system. That has to be in your legislation, or it will be ignored.

Finally, I would ask you, as a committee, to have the wisdom to provide a funding mechanism within the legislation. I would ask you all to ask yourselves this over the next coming months: Why did the Bill Davis 1975 Parkway Belt Act fail? You aren't the first people trying to create a greenbelt. Others have tried it before you, back in 1975, and they failed. The parkway belt plan, which was a magnificent plan, is filled with houses, highways and hydro corridors today. That plan failed.

I believe you have to provide the financial support to reward good behaviour. We've all heard examples of the Oak Ridges moraine land trust. Some people will voluntarily give them easements on their land at a very nominal cost. Funding has to be provided. If we had done that back in 1975, maybe there would be a greenbelt today, but there isn't. It's chockablock of houses, highways and hydro fields where there was supposed to be a greenbelt. I'm suggesting that you consider that a charge of one cent per cubic metre of water be added to all water bills across Ontario to provide funds to ensure that the permanent greenbelt that you are, I hope, going to create, stays permanent. If you have a source of funds, land trusts across this province can go to volunteers and pay to do the surveying and the legal work and put easements on the land that say, "These people voluntarily put easements on their land."

Those are my top 10 recommendations to you as a committee. I wish you well. I congratulate you for doing this. I hope you do it very quickly. I know that the people of Ontario are behind your doing the right thing.

**The Chair:** We have approximately six minutes left. I'll go to the government side first.

**Mr Duguid:** I want to thank Councillor De Baeremaeker for coming from Toronto city hall down here to Queen's Park. He's my councillor as well. He's been doing a great job for us out there in Scarborough. I want to commend him for the great work he has done on the Rouge file. I've known Glenn, as probably all of us here have, for—it goes back decades—well beyond 10 years—

**Mr De Baeremaeker:** It would be about 18, I think.

**Mr Duguid:** Probably something like that. He's been tireless in his efforts to preserve that land.



Glenn, I was with you in 1990 when the Peterson government announced the park, and it was a proud moment. It was a proud moment within the first six months of this government when we were able to make it all official by dedicating the land when Minister Ramsay came out. I know you were in council at that time and you missed that announcement a number of weeks ago.

My question to you is regarding your first suggestion, to include the protection of Rouge lands within the act. Do you have any concerns right now with the current regime of protection for the lands or is this something that would be more symbolic to ensure there is absolutely no discrepancy?

**Mr De Baeremaeker:** I do have genuine concerns about the fate of those lands. Every year we get somebody coming forward to the Rouge Park Alliance who says, "Let's sell off this piece of land and use the profits from that to do something else," and they may be all noble purposes. But my fear is that without formal protection in the greenbelt, these proposals will continue to come forward—perhaps not this year or next year, but sooner or later; maybe in 15 years none of us will be sitting at any council seat of any sort—and we may see a new set of people and the intent of what we're doing will be undermined. So yes, I have fears that this land will be declared surplus, as they say, and sold off, and I think that's wrong.

**The Chair:** The time is up on this side.

**Mr Hudak:** Thank you, Councillor De Baeremaeker, for your presentation on behalf of the Save the Rouge Valley System. I'll ask questions at the beginning. I had two. First, we had a presentation by the city of Pickering a bit earlier that actually proposed development on the agricultural lands in Pickering. I myself asked the ministers questions back in the fall with respect to their commitments on the agricultural preserve and the Seaton lands, where they seem to be backing away from their campaign commitments. Have you had a reassurance in any way that they're going to maintain their campaign commitments of preservation?

The second point is, we heard a lot in Niagara about the importance of supporting farmers and making sure that our agricultural land can stay green. Any suggestions for the committee on how best to support our farmers to make sure that land stands in profitable agricultural production?

**Mr De Baeremaeker:** Sure, I have just two quick responses. I have not had any formal response from the government that it's going to abide by that commitment. In good faith, I can only hope they will. I know that the study done by the town of Pickering was supported by the development industry and paid for in part by the development industry. A study was done on a permanent agriculture preserve for its utility for urban uses. Why would you study a piece of agricultural land for a subdivision when it's supposed to be permanent? I think this is the exact problem of why you're here. The planning system has failed grotesquely and that's why we're all sitting at this table today.

1730

This committee and the government, I hope, have to say, "These lands are off limits. Stop wasting everybody's time hitting us with this over and over again." I started 18 years ago and we still have the same people saying, "Let's bulldoze this land and let's pave it, and here are 101 reasons why." I hope that the government will abide by the spirit and intent of what it said and just declare this off limits.

Look at my point 10, in terms of the agricultural support. The farmers tell me now that they can't farm because the developers and the speculators are upping the price of land. A farmer can buy land at \$4,000 an acre to farm and make a good living and maybe even save for a pension plan, but when the developers start walking in up in Uxbridge and bidding \$15,000, \$20,000, \$25,000, \$30,000 for an acre of land, farmers can't compete. They don't have the capital.

I think, by creating a permanent boundary, you will send away the speculators and then the farmers will be able to buy the farmland. If you provide the funding so that somebody like the Oak Ridges moraine land trust can go to a farmer and say, "You've got 400 acres of land. We'll help you by putting an easement on it. We'll assist you financially in terms of the transition. That way you can farm it, it can stay in private ownership, but there is an easement registered on title so that no matter whom you sell it to, you can't do anything but farm it." Then the developers of the world won't want to buy that land and that piece of land will stay at \$4,000 an acre. That's the way to do it, but there needs to be funding in place to protect these lands.

**Ms Churley:** Thank you very much, Councillor De Baeremaeker, for coming here today. I'm sure you're very busy. Thank you for your bold presentation with great recommendations. I wanted to come back to your interesting comment about intensifying in existing built-up areas. Among the things that we've heard over the course of these hearings from developers or lawyers representing developers in some municipalities are dire predictions of practically the world coming to an end—those are my comments, but, you know, no more affordable housing, housing being unaffordable for a lot of people, all of those kinds of things—if we go ahead with this greenbelt as it's proposed. Can you give me your ideas of how you see the available land in existing built-up areas?

**Mr De Baeremaeker:** I think those doomsday predictions are just garbage. The Neptis Foundation, every planning body that I've come across—and I've been intensively involved in the development industry for 18 years—every set of planners I talk to says we already have enough lands in our OPs to go for 30 years. Without signing one more unit anywhere in the GTA or southern Ontario, we have enough land supply for 30 years. South of Steeles Avenue, as Councillor Duguid knows, we have people still farming. This is outside the Rouge Park on McNicholl Avenue, Steeles Avenue or Kennedy Road.

People are farming land way down in the urban centre, close to subway lines, while they're building up in

Richmond Hill and Uxbridge—and Stouffville, of all places. Why? It's just inventory. It's cheaper for developers to sprawl, and unless you create those firm boundaries, the cheapest and easiest thing for developers to do is to build on greenfield. Without a permanent greenbelt, there's no incentive and there's no reason for them to intensify properly. The cheapest, quickest way to make a buck is by bulldozing a cornfield up in Richmond Hill. The better way to do it is to intensify. We have enough land supply for 30 years without doing anything.

**Ms Churley:** Thank you. Could I—

**The Chair:** Our time is up, Ms Churley.

**Ms Churley:** No, I want a point of order. I want to ask a question to the staff.

**The Chair:** Thank you very much for taking the time. Well done.

**Mr De Baeremaeker:** Thank you, Mr Chair.

**Ms Churley:** On a point of order, Mr Chair: Just very briefly before we move on, I'd like to ask if perhaps the parliamentary assistant, through the staff, can bring back some information. There's been a lot of discussion at the committee level regarding the number of years each GTA municipality has in undeveloped land supply, so I'm wondering if we could get a summary of these figures, including the density in units per hectare that these figures are calculated on. And number two is an estimate of how the number of years of land supply would change if that density was built instead in transit-friendly areas. What kinds of changes would that mean? I think you understand what I mean.

**Mr Duguid:** In fact, I have seen some numbers around number of years. In terms of density numbers, I haven't seen anything specific. I just want to make sure our staff understand what you're asking for. Do you understand? Just nod your head. Or you can come up and—

**Ms Churley:** I think it's pretty clear, isn't it?

**The Chair:** Is it clear?

**Mr Duguid:** If they have any questions, they'll contact you to make sure—

**Ms Churley:** To not take up the time of the next deputant, why don't we clarify this after?

**Mr Duguid:** OK. I don't think that will be a problem, but they'd have to do the work, so I'd have to check with them first.

**Ms Churley:** OK. Thank you.

#### CREDIT RIVER ALLIANCE

**The Chair:** I will call on the next group, Credit River Alliance's Leslie Adams. Thank you for taking the time. On behalf of the committee, welcome to the presentation on Bill 27.

**Ms Leslie Adams:** Thank you. I'm here today as a volunteer member of the Credit River Alliance. When I moved to Ontario about eight years ago, I chose to get involved in the volunteer community. I had the option to go and work; I chose to get involved as a volunteer because I felt my skills and background were most suited

to helping small groups get some movement forward on issues. That's all I'm going to say about myself.

Good afternoon, Chairman Lalonde and distinguished members of the standing committee on general government. Thank you very much for allowing me this opportunity to speak to Bill 27, the Greenbelt Protection Act. My name is Leslie Adams and I am here representing the Credit River Alliance.

The Credit River Alliance comprises 30 environmental and conservation groups in the Credit Valley watershed. We share a common concern and goal of protecting the quality, health and viability of our watershed and all of its components. We represent an alliance of more than 10,000 supporters who place a high priority on maintaining a healthy and sustained river system and watershed. We realize that human and other impacts anywhere in our watershed, be it, for example, upstream or downstream, in the valleys or on the table lands, not only affect the integrity of our watershed but also impact our individual quality of life.

On behalf of the Credit River Alliance, I congratulate this government for the initiative it has taken in recognizing that the continued destruction of our natural areas and the services they provide free of charge is not consistent with a vibrant, sustainable society. In its wisdom, this government is looking at the carrying capacity of the area and beginning to recognize that it is nature's services that sustain our economic enterprises and our people. In the view of the Credit River Alliance the essence of this act is to recognize that economic, social and ecosystem values must be considered equally. We applaud the government, especially Minister Gerretsen, for taking a proactive step towards creating an approach to land use in the Golden Horseshoe area that is sustainable.

With regard to Bill 27, we offer the following comments and recommendations.

If the intent of this government is to enact legislation that supports sustainability, this must be clearly stated, and that element should be developed. This legislation must be strong, to ensure that the regulations are enforceable. The bill must allow for flexibility, so that the lower-tier governments, at a minimum, ensure provincial interests while allowing for enhanced legislation at this lower-tier level.

To do this, Bill 27 needs to include additional parts of the bill to articulate the generality of the bill, such as a goal or vision, a purpose or definitions. If sustainability is a goal of this bill, the definition of what sustainability means should be included.

Parts of the bill should also speak to management planning and information of the lands. This includes the process and contents, monitoring, that would go on on these lands.

The implementation should include mechanisms for formal partnerships, stewardship measures and the like. And there has to be a part in this bill for remedies and enforcements, such as damages and fines etc. In this vein, we would recommend to this government that the



legislation be structured in a similar fashion to other acts, such as the Crown Forest Sustainability Act.

1740

The Credit River Alliance supports a systems approach based on principles of sustainability for this legislation. Bill 27 needs to develop a monitoring regime based on carrying capacity, and allow for a vision or goal of what we want in the area as a human settlement pattern. That includes our agriculture areas, our resource areas, our development areas, and it also includes our natural areas. To help us get to this vision, a back-casting approach, as opposed to a forecasting approach, should be used. Back-casting would allow us to evaluate our policies based on where we are now and identify the gap to where we want to get in the future. Policy adjustments could then be made to put us on a trajectory towards sustainability.

The four principles of sustainable development that I am referring to are basic principles of physics:

(1) Substances from the earth's crust must not be used at a rate exceeding the natural regenerative capacity of that substance. So if we're taking carbon stores out of the earth, we shouldn't be burning them at a rate exceeding their regeneration back into the earth's crust.

(2) Substances foreign to nature must be replaced with alternatives found in nature. That would get to some issues around pesticides and things like that, and a plethora of other issues.

(3) Resource use should not exceed the natural regeneration of the resource.

(4) As a societal principle, our natural capital that's entrusted to you—for me, as a resident of Ontario—has to be equitably shared with everybody in this province.

The first three principles are based on physics, while the last principle incorporates social justice. This approach was developed by a cancer oncologist in Sweden, Karl Henrik Robert. It is now used by the national government of Sweden to shift their policies towards sustainability. It's also being used internationally, and it was the focus of the Canadian municipalities' Sustainable Communities Conference held this past February.

Measuring the carrying capacity could also be done succinctly with the ecological footprint. This measurement is accepted worldwide and is the work of Ontario-born Dr William Rees. This legislation needs to ensure that human settlement patterns on the landscape move toward a sustainability assessment approach, on which there is a growing body of literature. By considering the legislation through this lens, it focuses us on an ecosystem approach and allows us to consider the impacts our decisions have in a broader context.

The third point I want to bring forward is that water source protection must be integrated into Bill 27. Water is a fundamental need for our economy, agricultural production and for the survival of all species. We understand that our water, while renewable, is not an infinite resource and that changes and impacts to the hydrological cycle have far-reaching effects. In order for

Bill 27 to be robust, it must incorporate water source protection.

We would also recommend including entire watersheds in this legislation. The current delineation of the study area cuts watersheds off from source areas. This poses several potential problems, including some crucial headwater areas not being considered within the protection area. This could place undue pressures on these areas more sensitive to negative impacts and very important in the downstream context. If this is not addressed, impacts upstream in the watersheds could seriously affect the downstream health and integrity of the watershed and cause harm to the livelihoods and health of people. In the Credit watershed, the boundary suggested by the study area does not include recharge areas west of the Oak Ridges moraine and significant sections of sub-watersheds of the Credit.

Our fifth point would be to broaden the scope of the bill to recognize that the area is not only for environmentally sensitive areas but is also recognized as a green infrastructure belt that supplies services such as clean air, food, safe drinking water and waste assimilation. Consideration must also be given to what resources and infrastructure is allowed within the greenbelt. Careful consideration of the real costs of these activities must be considered for all projects.

Our sixth point would be to include all of southern Ontario in the study area. The current bill must allow for the whole of southern Ontario to be considered within the legislation. Upon completion of the area under immediate pressure, a similar exercise needs to be undertaken for the rest of southern Ontario. Substantial work has already been undertaken in this area, by both government and civil society, through exercises like the conservation blueprint from the Nature Conservancy of Canada; the Big Picture and the Bigger Picture, exercises in Carolinian Canada; a natural core and corridors strategy by the Ministry of Natural Resources. The source protection planning is another form of big picture planning, and the NOAH project that was mentioned earlier today.

These are just a few examples. If you include in this the work done by conservation authorities, lower-tier municipalities and not-for-profit organizations, there's a strong base from which to develop a strategy for all of southern Ontario. The task now is to take these existing approaches and integrate them into a comprehensive whole to form a complete picture of ecosystem health and integrity.

Point 7 is that the greenbelt legislation, in our view, must be the base on which growth management and natural resource use must be layered, and the provincial policy statements must recognize and develop a mechanism to address conflict use. We're saying the green infrastructure has to be at the base of it.

This mechanism could well be the approach I mentioned in my second point. By approaching conflicts over land use in this framework, consideration would be given to the economic, social and ecological implications of undertaking or not undertaking a specific activity. In this



way, we would begin to recognize the true cost of an activity on the ecosystem in which it operates.

Concerning the Credit Valley watershed in and of itself, we must recommend that it be of the utmost importance within the greenbelt area. The Credit River is a crucial asset to all of Ontario for several reasons. The Credit is home to 45 different species of fish. It is the most diverse cold water fishery and one of the most important river systems in the province. The Credit has huge runs of 20,000-plus Chinook salmon and 10,000 steelhead every year, with the steelhead population, now at 90% wild, that has been reintroduced into the watershed. Coho, pink, and Atlantic salmon occur in small numbers, not to mention largemouth and smallmouth bass and many other fish species. Around the Forks of the Credit there is a world-renowned trout fishery of both brown and brook trout.

It is also estimated by the MNR that millions of dollars are generated annually in this region due to the fishery. The fish also allow us to monitor and maintain the health of the watershed. Like canaries in a mineshaft, the health of the fishery is directly related to how we control or minimize the cumulative impacts to our river system.

The Credit River is already seriously stressed with the pressure of urbanization. We are more than halfway toward a level of damage that is irreversible. The next five to 10 years have much more development planned and the Credit River faces a potential tipping point as to which way the river will go.

Healthy rivers and communities in watersheds depend on a sustainable water supply. The Credit's base flow is 65% dependent on the groundwater supply, and the MNR indicates that this groundwater contribution is essential to the health of our watershed in the Credit. We need to ensure that the flows of our Credit are maintained. To maintain the flow, Environment Canada recommends that a healthy watershed should have 10% wetlands, whereas the Credit only stands at 6%. The same is true for forest cover. Environment Canada recommends a 30% forest cover, and the Credit stands at less than 15%. Adding wetlands and forest cover will help us maintain our groundwater supply. Reforesting stream corridors, especially in critical recharge areas, and acquiring and restoring lands around sensitive sites are all positive steps that can help counter cumulative impacts.

Credit Valley Conservation has a well-developed greenlands securement strategy that identifies areas in need of permanent protection. The Credit River Alliance recommends that the Greenbelt Protection Act ensure that the lands identified are given the highest protection, and we even go so far as to transfer over time damaging land uses in critical areas in our watershed out of those areas. We also recommend to this government that the west branch of the Credit, Silver Creek, be considered first as a strong candidate for provincial park status.

In closing, I'd like to thank this government again for considering the collective good of all Ontarians by recognizing the need to enact greenbelt legislation that

will halt the degradation of our natural areas in the Golden Horseshoe. We applaud this government for realizing that this area is not only a component of our economic and societal fabric, but also critical in that natural areas are the very basis on which we depend for life-giving and sustaining processes, and that by putting our ecosystems in danger of collapse we are putting ourselves in danger as well.

We believe this government will enact legislation that is not dominated by the self-interest of a small number of private landowners. Credit River Alliance believes that ecosystems are the basis on which our lives, livelihoods, health and futures operate.

We look forward to partnering with our provincial government and others to ensure our watershed is brought to and maintained in a healthy, vibrant and sustainable state through the Greenbelt Protection Act.

1750

**The Chair:** Thank you, Ms Adams. We have time for one member's question.

**Mr Hudak:** Thank you very much for the presentation. I want to follow up on your point with respect to local control and local decision-making. Obviously there will be a transition from this bill to a permanent greenbelt approach, whether it's legislation or some other method.

This legislation allows the minister as well as cabinet to make exemptions in the areas of what would be defined as an urban use, what the boundaries are and the exemptions for particular pieces of land or uses on that land. Are you comfortable with that approach? Do you think more should be in the hands of municipalities? What's your advice to the committee on where we go with respect to the power of the minister versus local community councils?

**Ms Adams:** I'm not an expert in those types of areas. I know from some of the experience I've had that you need to be very careful in allowing solely a municipality to exempt something, to put it into an urban area. My personal preference—this is just me—would be that if there was something like that going on, you would have to create a stakeholder panel within the community so that you would have community input, and especially made up of the people who had worked so hard to make sure that was part of the area that was going to be protected. Otherwise you're throwing the baby out with the bathwater if you say, "Yes, that's there," and you turn around and just say, "Oh, we can do this."

So it should be the minimum of what the provincial government has identified and put as the overlay, and then the lower-tier governance could go beyond that. They shouldn't be able to unless they're looking to protect something. You would have to have community input.

**The Chair:** Thank you for coming down, Ms Adams.

**Ms Churley:** I have a point, if I may. Do you want me to do it now or wait until you—

**The Chair:** Perhaps you could wait for a second.

**Ms Churley:** OK. I just didn't want people to leave.



## TORONTO AND AREA ROAD BUILDERS ASSOCIATION

**The Chair:** We have with us the Toronto and Area Road Builders Association, which had asked to be on the list before. Due to a strike, they sent us a memo on May 25, I believe, that they would not be able to attend. They've asked to be put back on the list. They were replaced by the Woodbine Entertainment Group. We have enough time. We have about eight minutes left. If I have unanimous consent, we could hear their case. Do you all agree? Agreed.

Could you state your name, please? You have approximately seven minutes.

**Mr Silvio De Gasperis:** Thank you for hearing me. I really appreciate this. There is a strike still going on, so Michael O'Connor could not make it.

My name is Silvio De Gasperis. I'm the president of TACC Construction, a member of the road builders association, the sewer and watermain association, the home builders' association, the concrete pipe manufacturers association—I could go on, but we'll just keep it at that.

Road building is directly related to the economic development of this province. Better road infrastructure means less gridlock. Better roads mean less pollution. The entire construction industry is all interrelated. Road building, electrical distribution, gas, powder cement, ready mix, sewer and water main, and concrete pipe manufacturing are directly related to road building and infrastructure.

We cannot build a road without utilizing some or all of these industries. Without roads, the home builders—low-rise, high-rise—could not achieve their requirements and goals of providing housing for people in this province.

That's one of the handouts I gave out. That was a release from the home builders this morning that shows how many jobs are created by the entire home building—high-rise, low-rise—industry. We as an industry provide more jobs than the car industry—the auto parts industry and the manufacturing of cars.

We need some recognition of that. I know the province has initiated half a billion dollars to promote the car industry, but what's also important is our industry. If we cannot create affordable housing, affordable infrastructure that will provide affordable housing, people cannot afford their houses. If they cannot afford their houses, manufacturers will not be here to provide factories for them.

I know of two plants that just recently moved down to the States because of incentives through the government. One ended up in Kansas and the other ended up in, I believe, Utah. I can get you those names; both were a part of the auto parts manufacturing industry. Mercedes moved part of their division down there and so did General Motors. So it's important we as an industry are able to provide good transportation for all the roads in the GTA.

The export of manufactured products is still done mostly in trucks. Rail does not work as well because

eventually they have to get on to a truck to end up at their final location.

Environmental assessment is another thing that's an issue with our industry. Environmental assessment is taking way too long. It could take three to five years, and then there could be a bump-up that could delay it even further. These are a few of the projects that are being affected by environmental assessment right now in the GTA area: the Markham bypass, the 427 extension, the Red Hill expressway, which I believe took 12 or 13 years to get done, the 407 east, which is going to be starting, hopefully, and the Pine Valley extension. These are only a few that have to do with roads. In York region there are other things that have to do with infrastructure, such as the trunk sewers, the southeast collector, which in two or three years will be able to shut down York region if that sewer is not—it's become a real issue with environmental assessment. For all of these examples it takes years to complete the environmental assessment. Special-interest groups appeal them for bump-ups and, in turn, further delays.

In 1994, TACC Construction, which is our company, was the first contractor to start on the 407. We started at Bathurst, just north of where the 407 is now. Environmentalists showed up with signs saying that this was the highway from hell. Fortunately, this is the best highway and the best thing that could have happened to the GTA and York region. It has transit corridors, good transit for the industry up there. Without the 407, the gridlock would have continued to get worse.

Bill 27, An Act to establish a greenbelt study area, must keep in mind the economic growth of the province: jobs, housing, public transit, transportation of product, affordability of industrial land and housing. The success in the future of the roads and the transit system: They serve an independent—concentrating growth activity closer to the source of the jobs. This has been recognized by municipalities in their urban expansion and growth management studies.

I'd like to make a few other comments, if I can. I heard Mr Glenn De Baeremaeker's comments on the Pickering lands, but the fact is that those lands were expropriated for building a community of 270,000 people back in the early 1970s. The infrastructure was put in place; it would be a waste for the 407, the 401 and Highway 2. There are all sorts of other minor roads in there which I believe are paid for. It would be an injustice to taxpayers not to utilize the infrastructure to the max. Thank you.

**The Chair:** Very good, Mr De Gasperis. I know that your original application was made on May 14, but we did recognize the position you were in. Thank you very much for taking the time.

Before we adjourn, Ms Churley, you had a point of order.

**Ms Churley:** Thank you, Mr Chair, for this opportunity. I want to bring to members of the committee's attention, because we do get a lot of correspondence as well as people who come to give deputations, a letter—and I

think this is very important to get on the record—from Mayor William Bell of Richmond Hill, dated—sorry, I don't see a date on it.

On page 2 he thanks me for the questioning of Mr Davies, for clearly identifying weaknesses in his argument. This letter is relevant and people should read it. I want to put on the record that the mayor disputes several comments that he and Ms Foran made in regard to that city's position on the development of Bayview north landowners. I recall at the time specifically, when questioning Mr Davies, that they had taken a different position. I believe it's unfair to leave on the record just the misstated position of that council and that mayor without getting on the record at least the fact that Mayor Bell wrote a letter clearly outlining many differences, not only in opinion, but also attaching council decisions that

were diametrically opposed to some of the things these two developer lawyers—I believe representatives—stated the position of that council to be.

I urge people to read this letter. For the record, Mr Chair, I wanted to make sure that information was included so that people can see the true position of the council in regard to the Bayview north landowners.

**The Chair:** Thank you very much for those comments and the attention we have to pay to this letter.

We will have clause-by-clause starting on Wednesday, June 2. As you all know, we had scheduled three days of public hearings and we ended up having four. There was a lot of interest in this bill. I thank all the members for their participation.

The meeting stands adjourned.

*The committee adjourned at 1803.*









## CONTENTS

Monday 31 May 2004

<b>Greenbelt Protection Act, 2004, Bill 27, Mr Gerretsen / Loi de 2004 sur la protection de la ceinture de verdure, projet de loi 27, M. Gerretsen.....</b>	<b>G-377</b>
City of Pickering .....	G-377
Mr Thomas Melymuk .....	
Woodbine Entertainment Group.....	G-380
Ms Jane Holmes .....	
Pembina Institute for Appropriate Development.....	G-383
Dr Mark Winfield .....	
Oakvillegreen Conservation Association Inc .....	G-386
Mr Hank Rodenburg .....	
Ontario Sewer and Watermain Construction Association .....	G-388
Mr Sam Morra .....	
Mr Ira Kagan .....	
Save the Rouge Valley System.....	G-391
Mr Glenn De Baeremaeker .....	
Credit River Alliance.....	G-395
Ms Leslie Adams .....	
Toronto and Area Road Builders Association .....	G-398
Mr Silvio De Gasperis .....	

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20N  
16  
G23



G-16

G-16

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First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 2 June 2004

# Journal des débats (Hansard)

Mercredi 2 Juin 2004

**Standing committee on  
general government**

Greenbelt Protection Act, 2004

**Comité permanent des  
affaires gouvernementales**

Loi de 2004 sur la protection  
de la ceinture de verdure



Chair: Jean-Marc Lalonde  
Clerk: Tonia Grannum

Président : Jean-Marc Lalonde  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 2 June 2004

Mercredi 2 Juin 2004

*The committee met at 1543 in room 151.*

## GREENBELT PROTECTION ACT, 2004

LOI DE 2004 SUR LA PROTECTION  
DE LA CEINTURE DE VERDURE

Consideration of Bill 27, An Act to establish a greenbelt study area and to amend the Oak Ridges Moraine Conservation Act, 2001 / Projet de loi 27, Loi établissant une zone d'étude de la ceinture de verdure et modifiant la Loi de 2001 sur la conservation de la moraine d'Oak Ridges.

**The Chair (Mr Jean-Marc Lalonde):** I would call this meeting to order. As you are aware, this is the first day of the clause-by-clause review, but before I start I would like to make sure we acknowledge a letter we received today from Stephen LeDrew, a letter that I think everybody has received. Thank you. Then we'll start.

**Mr Tim Hudak (Erie-Lincoln):** On a point order, Chair: I just wanted to extend my thanks to the committee members and Tonia and her staff. Some of us who are becoming accustomed to the other side of the House didn't get our amendments in as early as the NDP or Liberal members did. I want to thank Tonia and committee members for understanding our getting them to you later than we had intended. Thank you, Chair.

**The Chair:** You really got her running.

**Mr Hudak:** Appreciate it.

**The Chair:** Can we proceed now with section 1, "Definitions"? It is a government motion.

**Mr Hudak:** Chair, if I may, just help me with procedure, and maybe the clerk could as well. I thought we had brought forward amendments to the preamble, additions to the preamble. Does that come later on?

**The Chair:** That will come later on.

**Mrs Maria Van Bommel (Lambton-Kent-Middlesex):** Could we ask that staff from the Ministry of Municipal Affairs and Housing join us so that when we need technical advice we don't have to have them coming and going constantly?

**The Chair:** Any objection? Could you come forward, please? Whenever there are comments, if you could state your name.

**Ms Marilyn Churley (Toronto-Danforth):** As I understand it, whichever party's motion it is reads that motion into the record; correct? So the government first.

**The Chair:** The first one we've got, section 1, government motion.

**Mr Bob Delaney (Mississauga West):** I move that section 1 of the bill be amended by,

(a) striking out "Municipal Affairs" in the definition of "Minister" and substituting "Municipal Affairs and Housing"; and

(b) striking out the definitions of "urban settlement area" and "urban uses" and substituting the following:

"'urban settlement area' means any area of land that, on December 16, 2003, was designated in any official plan as an urban area or a rural settlement area including, but not limited to, areas designated as urban areas, urban policy areas, towns, villages, hamlets, rural clusters, rural settlement areas, urban systems, rural service centres or future urban use areas; ('zone de peuplement urbain')"

"'urban uses' means uses that are non-agricultural commercial, non-agricultural industrial, multi-residential, institutional, mixed use commercial/residential and golf courses, but does not include forestry uses, mineral aggregate uses and conservation uses. ('utilisations urbaines')"

**The Chair:** Any discussion?

**Mr Hudak:** A couple of points of discussion. First on procedure, one of the fresher amendments we brought forward from the opposition, which is the third one in our package, has a very similar definition to "urban uses," adding in "greenhouse uses, value-added agricultural uses and recreational agricultural-based tourism uses." Just maybe a question to you, Chair, or to the clerk. While I support a good portion of this amendment, I do feel there should be additions which are similar to the wording in the third motion. Give me advice on how to proceed. Should I amend this first motion or should we move to the third one?

**The Chair:** You'll be reading yours later.

**Clerk of the Committee (Ms Tonia Grannum):** Right. I would probably suggest that you amend; if this passes, then your motion would be irrelevant.

**Mr Hudak:** Very good. While I don't have a concern with parts (a) and (b) or the definition of "urban settlement area," the definition of "urban uses" that we submitted is somewhat different. Could I move then that the "urban uses" definition be amended?

**The Chair:** Definitely.

**Mr Hudak:** I move that the definition of "urban uses" in this first motion be amended to read:



“urban uses” means uses that are non-resource commercial, non-resource industrial, multi-residential, institutional, mixed use commercial/residential or as otherwise prescribed by regulation, but does not include forestry uses, mineral aggregate uses, conservation uses, greenhouse uses, value-added agricultural uses and recreational- and agricultural-based tourism uses. (‘utilizations urbaines’).”

**The Chair:** Any other amendments?

*Interjection.*

**The Chair:** Yes, we have to start from—

**Ms Churley:** I don’t have another amendment, but I want to comment.

**The Chair:** You can comment, yes.

**Mr Hudak:** Do you want me to explain first?

**The Chair:** You can explain, yes.

1550

**Mr Hudak:** Just reflecting some of the advice of our deputations, we certainly heard—as I said, I agree with the lion’s share of the amendment brought forward by the government member, so I’ll constrain my comments to what’s different.

I took out golf course uses. It seems to me, what’s quite common in the greenbelt area as it exists today are golf courses; in fact, I think you can make the argument that golf courses contribute to the benefits of areas like the Niagara Peninsula or parts of the proposed greenbelt study area. I think it helps people enjoy what the government’s intentions are of creating this green zone, whether it’s a fruit belt, green area, or parks and recreation.

What I worry about is that the way definitions are arranged in the bill as it stands today, things that are common in the greenbelt study area would be disallowed, which I think is inconsistent, and in many areas the wrong thing to do. So I’ve taken out golf courses because I believe that’s a legitimate use in a greenbelt area, of course obviously subject to the municipal zoning decisions.

Secondly, I think forestry uses, mineral aggregate uses and conservation uses are the same as the government’s amendment. Greenhouse uses: There seemed to be a significant amount of confusion by a number of deputations in Niagara—and there may have been elsewhere, or by written submissions—as to the greenhouse industry and how it may be impacted by this bill. While they believe and I believe they are agricultural uses, they seem to have some concern that they could be defined outside of agriculture. Therefore, I believe that “greenhouse” merits its own language in the definitions of what would, in reality, be allowed in the greenbelt area, which is a common and growing use, I can say for certain, in the Niagara area today. So I want to make sure that the greenhouses have their own recognition in the definition of what would be allowed in the greenbelt area.

Third, we heard about value-added agricultural uses. We heard from a number of farm operators in this committee about things like wineries, cherry-pitting operations, functions that add value to agricultural products on the farm. I worry that if we’re not clear that they’re

included in what would be allowed in a greenbelt area, we may not see any more of these projects move forward. I think if we want to ensure that agricultural land stays in production, stays economically viable, these value-added uses should be allowed in the greenbelt area. I don’t know if that’s the proper technical term to use, but I do mean to cover things like wineries, winery presses, cherry-pitting operations and other such value-added agricultural uses.

Last, recreational and agricultural-based tourism uses: Again, I think this goes to what looks like the government’s intent in this bill in terms of allowing citizens to enjoy the greenbelt area, whether it’s tourists for recreational purposes, for hiking etc. Bed and breakfasts are quite common, an area that would be covered by the greenbelt if this legislation passes. I’m worried that the definition may limit the viability or the growth of the bed and breakfast type of tourism attraction. Therefore, I’ve included those types of uses to ensure that it is clear that whoever enforces this legislation down the road, these types of uses would continue to be allowed in the greenbelt study area.

**The Chair:** Any other discussion or comments?

**Ms Churley:** Yes. I just wanted to ask, who’s the parliamentary assistant? OK. A question around this—and I’m not quite clear. It says that “urban settlement area” clarifies the language, but I’m still not sure what you mean by a “future urban use area.” So can I ask, what does land designated for “future urban uses” refer to? Do you know?

**Mrs Van Bommel:** At this point, I’m a little bit confused. Are we discussing the amendment, or are we discussing the first motion?

**The Chair:** The amendment at the present time—as amended.

**Ms Churley:** Oh, well I have no comments on the amendment. I wanted—

**The Chair:** It’s on the PC amendment.

**Mrs Van Bommel:** If the member of the committee wouldn’t mind, we could carry on with the amendment, and then we’ll come back to that, if that’s OK.

**Ms Churley:** Sure. OK.

**The Chair:** Any other discussion and comments on the PC amendment?

**Mrs Van Bommel:** I’m looking at the discussion. I’ve listened to the member carefully, but I think what you’re talking about is basically what will be part of the greenbelt itself. I think what will be included or not included is premature. That’s why we’re having a study area at this stage.

There is a sunset clause attached to this as well. This bill is really just intended to create a study area and to take the time out in order to do that study. When we’re talking about the definitions of greenhouses and their uses and value-added, I think that’s for future discussion.

**Mr Hudak:** A different view, maybe a misunderstanding, but the legislation basically would, what’s it called, time-out, freeze development of projects in areas outside the urban area until the date at the end, December

16, 2004, or whatever it is. And then you'll be moving to permanent greenbelt legislation, I would assume, down the road. I think it's a fair expectation that what we decide in this bill will probably be reflected in the next bill. There will probably be some changes.

**Mrs Van Bommel:** I would consider that to be presumptuous, really. That's the point of having a study. If we presume now what will or will not be in the greenbelt, then why are we even bothering with a study?

**Mr Hudak:** Just to continue, I would expect—I think it's a fair expectation—that the next bill will probably build on some of the decisions we make today. So I think it's important to be cautious and to be wary of precedents that, in my view, could be dangerous.

I understand that there are projects today, whether it's an expansion of a winery, a new greenhouse operation or expansion of a greenhouse operation, that are in abeyance because of the MZO and, I believe, would stay in abeyance until the government makes decisions on what the final greenbelt legislation would look like. I want to ensure that municipalities that are in the greenbelt area between now and December 2004 would still be able to approve projects that support agriculture, including greenhouses. And that's why I've added greenhouse uses and value-added agricultural uses.

Second, there may be tourism projects that would go ahead—a new bed and breakfast in the Jordan area, for example, the Niagara Peninsula. My view is that they should be permitted to go ahead. These are jobs that have been sidelined. I believe they support the intentions of the bill in terms of supporting a greenbelt, supporting agriculture and supporting tourism. And that's underlying my intent of bringing those types of uses into the definition so that they would be protected, they would continue to be allowable uses outside of the urban area.

**Mrs Van Bommel:** But it is the intent to revoke the minister's zoning orders once this moratorium is in place, once this has passed. So the impact of the zoning orders won't be there any more.

**Mr Hudak:** Right. But once the MZO is over, the municipalities will enforce this legislation, right? What kind of bylaws they can pass will be determined by the contents of Bill 27, if passed. What I'm concerned about is, it's not clear in the legislation whether a greenhouse project or a value-added agricultural project like a winery, for example, could proceed, or other bed and breakfasts, pending whatever the final legislation is going to look like, the second greenbelt legislation.

So I think jobs are being delayed, unwisely. If it's the government's intent that things like wineries will continue, then great. I guess I'm trying to make sure it's clear in the legislation that those types of uses would continue to be allowed in the greenbelt area.

**Mr Lou Rinaldi (Northumberland):** Chair, I would ask that we vote on the motion, if that's appropriate.

**The Chair:** Any other comments on this amendment to the amendment?

**Mr Hudak:** Certainly. I'm trying to be helpful and positive. I guess I could move further amendments to the

amendment. I'm not sure if the government members are opposed to all of the changes I have proposed or just some of them. Obviously, I'd like all of them to go through, but if there are some that you support—I realize you have the votes; I'm willing to take some as opposed to all.

So if the members have any comments—I could argue that the same reason you are now adding “mineral aggregate uses” to ensure—aggregate use in an urban area makes no sense whatsoever. So I think you're making a good amendment to the bill by allowing mineral aggregate uses for the same reasons I believe greenhouses, value-added agricultural, and rec and agricultural-based tourism uses should similarly be allowed, which is happening today. I think the vast majority of people who live in the greenbelt think those are reasonable uses of land in a greenbelt area.

Maybe we could have some comment from the government members as to what they don't like about my amendment and whether there are some parts that perhaps we could salvage, if they don't like the amendment as a whole.

1600

**The Chair:** Shall the amendment to the amendment moved by Mr Hudak carry?

**Mr Hudak:** Recorded vote.

Ayes

Hudak.

Nays

Churley, Delaney, Dhillon, Van Bommel, Matthews, Parsons, Rinaldi.

**The Chair:** The amendment to the amendment is defeated.

Are there any other amendments? I have Ms Churley first.

**Ms Churley:** Just in terms of procedure again here, the next amendment is, I assume, if this government—look at the majority. They have been given their marching orders. So assuming that that passes, I assume that mine will be ruled out of order. So I would be better off including that as an amendment, would I not?

**The Chair:** You could, yes.

**Ms Churley:** OK. Assuming that the government amendment is going to pass, let me, first of all—should I move this as an amendment first?

**The Chair:** Yes, please.

**Ms Churley:** I move that the definition of “urban uses” in section 1 of the bill be amended by adding “including aggregate activities” after “non-agricultural industrial.”

**Clerk of the Committee:** Your motion has to amend this first motion.



**Ms Churley:** Right. How do I do that? That's what I was trying to do, because I understand that it will be ruled—

**Clerk of the Committee:** Leg counsel will help.

**Ms Churley:** OK. Sorry about all this, folks.

**The Chair:** What we're looking at at the present time—she has to come up with an amendment to Mr Delaney's amendment. So she's talking about removing a section and adding another section.

**Ms Churley:** Let me get some clarification here.

**The Chair:** You want to move an amendment to Mr Delaney's amendment.

**Ms Churley:** Can we come back to this in a second while I sort this out?

**The Chair:** Is there agreement that we'll come back later? Agreed. We cannot take a position on this section 1 as yet. We'll move on to section 2, the NDP—

**Mr Hudak:** Chair, can we ask you to do another amendment while she's caught up in trying to work on that first one?

**Ms Churley:** That's a good idea.

**The Chair:** OK. We'll move on to the PC amendment first. Mr Hudak.

**Clerk of the Committee:** We still have—

**The Chair:** Yes. We cannot proceed—

**Mr Hudak:** I was going to amend that amendment.

**The Chair:** We'll come back to section 1 later.

**Mr Hudak:** Chair, if I may, for one reason I think section 2 refers to section—

**The Chair:** To section 1?

**Mr Hudak:** Or to schedule 1. We may be amending section 1, which section 2 may depend on. I have other amendments to the government's motion.

**The Chair:** Not to this one.

**Mr Hudak:** To the first motion. You allowed me one, which was voted down, but I did not get a clear read on what parts of my motion the government members didn't like. So I'm going to continue to propose different motions to the first government motion.

I know you've given Ms Churley the floor to similarly amend the first motion. She's working with legislative counsel to make sure that motion is in order. So can we just allow me to move forward another amendment to the first motion?

**The Chair:** We're still dealing with section 1.

**Mr Hudak:** I guess the way I'm proceeding, for the sake of clarity, is I'm amending the first government motion that's on the floor in the following way: in the government motion, under "urban uses," to strike out the words "and golf courses."

**Mr Delaney:** On a point of order, Mr Chair: Has Mr Hudak had his chance to amend this section? Can he propose multiple amendments extemporaneously after having tabled his amendment?

**The Chair:** He may move different amendments as long as they are different from the original one that was defeated.

**Mr Hudak:** Let me be clear. As I said, I'm trying to be helpful and positive. I have proposed about four or

five changes to the government motion that's on the floor. I asked the government members which parts of my motion they didn't like. I did not have a reply. You voted it down as a block. Therefore, what I'm going to have to do is bring forward one piece at a time. If you vote them all down, fair enough. I mean, that's what they can do with their votes. But given that it wasn't clear what part you guys objected to, I move an amendment to the first motion that strikes out the words "and golf courses" in the paragraph of "urban uses."

**The Chair:** Any comments on this one?

**Mr Hudak:** Again, I think this is a common use that exists today in the area covered by the greenbelt. It's an important tourism area and I think it will help citizens enjoy the proposed greenbelt area.

**Mr Rinaldi:** On a point of order, Mr Chair: He's just repeating what he said before on that particular subject. We've heard it.

**The Chair:** He's referring to another part of this amendment.

**Mr Rinaldi:** He's explaining about his understanding of the use of a golf course, and I guess we've heard that already. I don't see any changes from his first explanation to the second explanation.

**Mr Hudak:** I appreciate Mr Rinaldi's advice on debate. I'm not doing this to cause delays. I'm sincere that I think it's a bad decision by the government to exclude golf courses from the rural area golf course expansions.

This is not a time-allocated committee, from what I understand, and if I wanted to talk about all the different golf courses, Mr Rinaldi, I certainly could do so. I just want to have fair and open debate. If you object to my motion, go ahead and please vote it down, but don't cut me off from discussing what's an important motion to my constituents or the businesses out there.

**The Chair:** Any other comments? Mr Rinaldi, he was allowed to bring that amendment because it refers only to one of the sections of his previous amendment. Any other comments?

**Mrs Van Bommel:** What I understand from your comment is that you feel that golf courses are not an urban use.

**Mr Hudak:** What I'm saying is, if you put golf courses in the description of urban use, my read on this bill would be that they would not be permitted outside of the urban area.

**Mrs Van Bommel:** That's right.

**Mr Hudak:** If you feel that way, if you feel that in rural Ontario, the area that is covered by the greenbelt area, golf courses should not be allowed, there's something strange about that.

**Mrs Van Bommel:** So in other words, you're saying it's OK to take a good farm and make it into a golf course.

**Mr Hudak:** I'm saying that if a municipality makes a decision to allow land to be used as a golf course, it's commonplace, at least in my part of rural Ontario, for golf courses to be in the country and outside of the urban

boundaries. If a municipality continued to follow that practice—

**Mrs Van Bommel:** But the intent of this bill is to protect environmentally sensitive areas and agricultural lands. So you're saying to me that it's OK to put a golf course on good agricultural land; you don't put those on just small 10-acre pieces.

1610

**Mr Hudak:** Maybe it's different in Lambton county, but golf courses are commonplace in areas outside of the urban boundaries, at least in the Niagara Peninsula. Yes, I do think that golf courses can contribute to what the government wants to achieve in a greenbelt area. Therefore, I think that it's a mistake for the government to include golf courses as an urban use. It seems to be sensible. It's a common use in rural Ontario and a source of jobs.

**The Chair:** Mr Hudak, could you move your amendment to the amendment, please?

**Mr Hudak:** Certainly, Chair. I apologize, I don't have the language exactly correct; you can help me if I do not.

I move that under the definition of "urban uses" the words "and golf courses," be stricken.

**The Chair:** I would call a vote on this one.

**Mr Hudak:** Recorded vote.

#### Ayes

Mr Hudak.

#### Nays

Ms Churley, Mr Delaney, Mr Dhillon, Ms Matthews, Mr Parsons, Mr Rinaldi, Mrs Van Bommel.

**The Chair:** The amendment to the amendment is defeated.

Now I'll move on to the NDP.

**Ms Churley:** I want to thank legislative counsel for helping me get this right. I was terrified that I was going to get it backwards and this would be included when I want it excluded. This wording can be very tricky.

So my amendment would be this: I move that the definition of "urban uses" in the government motion be amended by striking out "mineral aggregate uses" and adding "aggregate uses" after "non-agricultural industrial."

So that's the amendment. Of course what I'm trying to do here—can I speak to this amendment now?

**The Chair:** Definitely.

**Ms Churley:** I take a totally different approach from the Conservative Party. I'm actually trying to make this bill stronger and protect environmentally sensitive areas better than this bill does. Of course, the key change, as I see it, in this government amendment is in urban uses. It's the inclusion of forestry, mineral aggregate and conservation uses. That prevents section 6, "Matters stayed," from affecting an ongoing approvals process for aggregate operations.

From my point of view—and I know there were a couple of very strong deputations on this—I think it's a clear gift at this point. It's a very short time frame, when you're looking at this, to the pits and quarries industry. What I'm really concerned about is very important environment land. We don't know how many of these applications are in the pipeline. It could be affected by this. So I think that this is a particularly dangerous kind of use to be allowed to be exempted from this, and that's why I'm making that amendment.

I would recommend to the Liberal members that you support this very simple but very important amendment in terms of keeping to your word and showing that you are doing everything you can in this bill to protect environmentally sensitive land.

**The Chair:** Any further discussion?

**Mr Hudak:** I'm pleased to comment. I admire the work of my colleague on the committee, Ms Churley, but we don't agree all the time.

**Ms Churley:** Much of the time.

**Mr Hudak:** I have to speak out against the amendment. In fact, I'm of the opposite view. This is currently a common use on the escarpment and in other areas that are covered by the proposed greenbelt area. It seems to me that making that kind of shift—and I worry, again, about Bill 27 being the basis of the permanent bill. You're taking what has been a common, historic use in these areas out of commission.

Secondly, the impacts of removing proximate aggregate supply on the costs of infrastructure—the government wants to build new roads in the province of Ontario—could be substantial. These projects take a tremendous amount of time to get through the environmental approval process and other processes—let alone, probably, the escarpment commission process—so to delay them or cause them not to happen at all would have a detrimental impact on the provincial economy, on the treasury and on local jobs as well. Therefore, I will be voting against the proposed amendment.

Point of curiosity: the government member, the parliamentary assistant, spoke out about golf courses and the impact that could have on land in the greenbelt area. Surely she'd probably agree that resource development would have a more dramatic impact than golf courses. So logic would probably mean that the government members would support this amendment. But I'm against it.

**Mrs Van Bommel:** Again, in terms of aggregate uses, I think it's a recognized rural use. It's something we are accustomed to seeing in rural communities. I understand Ms Churley's concerns and I certainly consider that, but to say that they're an urban use when they are, traditionally, a rural use—I'm wondering if we're not going to be setting a precedent by defining them in that respect. I'm concerned about the precedent we might be setting in this case, so I think I would be opposed to it.

**Ms Churley:** I would just advise the government members to look at their all-over-the-map definition—we'll get back to this when we get back to the original amendment—of what we mean by "urban use." Certain-



ly, it is all over the map and I want more clarification. But let me say again, the reason I'm including this is because of the clear impact this kind of land use has in environmentally sensitive areas.

It's your bill, and there's a very short time frame on this, as you know, but there were deputations from the other side, from community groups that talked about the severe detrimental impact that some of these pits and quarries have on the environment, surrounding water etc. Those were very compelling arguments.

As well, as I pointed out during one of the public hearings, the environmental commissioner in his comments—I believe it was his last report about the lack of rehabilitation of these lands by the companies. If you look at some of the pictures, it is very intense land use. So from that point of view, if we want to get sticky and talk about what actually is urban and what is rural, I don't think that's what the definition really means here.

We're looking at trying to come up with the best land use plans possible, not only to avoid urban sprawl but to protect our water and our environment. Therefore, I just really urge you. It is a short time and we have to do, separate from this committee, a lot of work with the Environmental Commissioner and with the owners of these companies to make sure that more rehabilitation is done and that much more reuse and other things are done. That's a discussion for another time, but I think it's really critical to include it today in the definition of urban use. So I hope you'll support it.

**Mr Hudak:** I just think it's important for us also to note a couple of deputations that wanted to make clear that aggregate extraction is not an urban use. It's the APAO and Hanson, which legislative services have been kind enough to provide us. So we have heard from deputations that would argue against Ms Churley's motion. I just wanted to read that into the record.

**The Chair:** Thank you. We'll proceed with the vote, the NDP amendment.

**Ms Churley:** Recorded vote, please.

#### Ayes

Churley.

#### Nays

Delaney, Dhillon, Hudak, Matthews, Parsons, Rinaldi, Van Bommel.

**The Chair:** So the amendment to the amendment is defeated. Now we'll move on to the government amendment.

1620

**Mr Hudak:** I'm proposing another amendment to the government's motion. This is to add, in the definition of urban uses, after "conservation uses," the words "and greenhouse uses."

As I said earlier, there was significant concern—I heard it in Niagara; it may have been at other hearings as

well—about whether greenhouses will fit within the definition of agriculture. I certainly think they do. In fact, the farm gate value of greenhouses in the peninsula and other parts of the province—I'm not sure about other parts of the proposed greenbelt study area—is near the top of agricultural production.

I worry that if we exclude greenhouses and we're not clear that greenhouse uses would be allowed outside of the urban area, they may face some difficulties in expansions or new greenhouses. This certainly is a growing area of jobs in Ontario. I would expect that government members would agree that it's a type of agricultural use. I want to be safe and make sure that it is specifically mentioned in the bill so it would continue to be allowed in the rural parts of the greenbelt area.

**The Chair:** Can you spell out your amendment to the amendment?

**Mr Hudak:** Certainly, Chair.

I would amend the motion on the floor, in the paragraph entitled "urban uses," to add the words "and greenhouse uses" following the words "conservation uses."

Should I reread what the paragraph would say?

**The Chair:** That's OK.

**Mr Delaney:** On a point of order, Chair: I would like to rule this motion redundant, as this has been discussed before.

**The Chair:** Were greenhouses discussed at the beginning?

**Mr Hudak:** I think what the member is referring to is that I brought forward a motion that listed, I think, five changes in total, in aggregate, to urban uses. I asked government members at that time if they disliked all five or if there were parts of that they would support. I did not receive an answer, so I'm forced to move them individually to see if perhaps some of them will pass, and I certainly hope they will.

As I said, I'm trying to be fair and open and making sure that there is a recorded vote in these areas, whether they are voted down or in favour. I certainly do think that adding "greenhouse uses" alone is significantly different from my original motion and is an important thing to have on the record and part of this legislation.

**The Chair:** This is legal.

**Mrs Van Bommel:** We recognize greenhouses as agricultural. If we're going to start picking away at every little definition of what is or what isn't agriculture, we're going to be here all night. Are we going to go into any type of production and start deciding whether it's agricultural or not? Greenhouses are considered agriculture. If we say we're going to include this one type of agricultural activity, then we're going to be approached by others who are going to want to add their agricultural activity. Can we add chickens?

**Mr Hudak:** Just in response, if you want to add chickens, we can add chickens. I don't think that's necessary and let me tell you why. And I appreciate you saying on the record in Hansard that you believe greenhouse use is agricultural. I think that's helpful, and maybe if the minister says the same when he's discussing this bill in

the Legislature it would be even more helpful, so I appreciate that. But we did hear from greenhouse advocates, owners and workers that they were concerned about whether greenhouses would always be accepted as agricultural uses or not. We didn't hear that from any other commodity group.

I'll tell you, I'm not intending to play silly games and add chickens and cattle and that sort of thing, because I think they're very comfortable that they're covered under agricultural use. The only type of particular use I'm bringing forward is greenhouses, just because we heard from—I apologize, I don't have them listed, but I do recall about three different greenhouse operators who expressed that concern about whether greenhouses would be accepted in the rural parts of the proposed greenbelt. They were worried that they would not be seen as agriculture in all circumstances. That's why I'm asking the government members and Ms Churley to support my motion to specifically mention greenhouse uses as an amendment to the motion the government has brought forward. I'm not bringing up other commodity groups. I just think that they're the ones who expressed genuine concern about how they'd be treated under this bill, if passed.

**The Chair:** We will proceed with the vote now.

**Mr Hudak:** Recorded vote.

#### Ayes

Hudak.

#### Nays

Churley, Delaney, Dhillon, Matthews, Parsons, Rinaldi, Van Bommel.

**The Chair:** The amendment to the amendment is defeated.

Now I'll move on to the government amendment.

**Mr Hudak:** Chair, amendment to the motion.

**The Chair:** Yes.

**Mr Hudak:** Just following up on the pattern, since I didn't get feedback on what parts were objected to, I move an amendment to the government's motion that would include the words "value-added agricultural uses" after the words "conservation uses" in the definition of "urban uses."

Again, just as the government is proposing in their motion to ensure what's normal in rural Ontario—forestry, mineral aggregate and conservation uses, to ensure that it's clear that those projects can continue outside of the urban area—I too want to ensure that value-added agricultural uses have the same benefit of clarity and protection, whether they are, as I mentioned, a winery, a cherry-pitting operation, a grain silo or further processing or finishing of agricultural meat products.

I'm concerned that they would not be allowed in rural areas on farm or next to farm and would have to go into the urban areas, which I think would be a hardship for

our local farmers. That's why I think we need to make it clear that value-added agricultural uses would be allowed in the areas outside of the urban area.

**Ms Churley:** What do you mean by "value-added"?

**Mr Hudak:** Again, I'm not a lawyer in terms of whether this is the proper definition. The area I'm trying to get at is things like I had mentioned, whether it's a winery, a cherry-pitting operation, grain silos.

**Ms Churley:** Oh, my heavens.

**Mr Hudak:** Things that currently exist on farm or beside farm that help promote the economic viability of farmers in the greenbelt area. I think we would all support the notion that we want to ensure that if the farmland stays in production, the greenbelt would be far more successful than not. If we want to save the farmland, we need to save the farmer. Part of that is ensuring that value-added operations like those I mentioned would continue to be allowed in the rural areas.

Now if folks from the ministry can help with the language to make sure that I'm describing it accurately—but those are particular functions that I am concerned about that might not meet the strict definition of the urban uses.

**Ms Churley:** I don't necessarily mean to be trying to help the government out here, but I think, just from listening to what you're saying, you may be talking about some fairly major things which could have an impact on these environmentally sensitive lands. I think you're also talking about some of the smaller uses which, later on in a government amendment, deal with what I call loopholes in the bill. There are going to be some necessary exemptions in some of the small—the sheds, the this, the that, that I think we all agree with here and there, and perhaps some of the smaller things that you're thinking about on existing farms would fit into that. I think it's dangerous to start opening this up to be that inclusive, because of some of the possible environmentally dangerous things in there. But there is an amendment later on that will deal with some of the smaller uses, in my view. If I'm wrong about that, tell me.

**Mrs Van Bommel:** You're absolutely right. Also, I'm concerned that when we start talking about value-added, you're going to have to define what "value-added" is, and even in the farm community there's controversy over what is value-added. Unless we're prepared to define for the farm community what value-added is, I don't think I want to go there.

**Mr Hudak:** You could be helpful. The government members have the benefit of a significant number of staff who are here in the room today—more than a handful. They could help make sure that some of the uses I mentioned are protected.

Second, as I think the parliamentary assistant knows, you can prescribe by regulation what some of these definitions are, if the bill passes as you propose to amend it. I think it's a genuine concern that we heard from agriculture groups. I recognize that my definition is a relatively open one. It's the best I could do with resources I have at hand. If ministry staff or others can help me with



what I'm trying to achieve in language, I'd be in their debt. I just want to make the point that if you want the farmland to be economically viable, we need to support the farmer, and part of that is ensuring that normal value-added processes that exist today in rural Ontario could continue to occur in the greenbelt area. I think it's very reasonable and helps support our farmland.

1630

**The Chair:** Mr Hudak, could you read your amendment to the amendment?

**Mr Hudak:** Is there any help from ministry staff in terms of helping me with my definition, if they're uncomfortable with the definition being too wide open?

**Mrs Van Bommel:** As I say, I feel that within the farm community there is controversy over that alone. I don't think we should be prescribing to them what value-added is.

**Mr Hudak:** With something like a winery—the crushing operation, the commercial side, the retail establishment, the restaurant; commonplace in the greenbelt study area today and in the peninsula, and probably fruit wines in other places—is the government confident that those uses would continue to be allowed outside of the urban area under the current definitions?

**The Chair:** Could you please read your amendment?

**Mr Hudak:** Chair, I think I need an answer to that question. I'm not ready to relinquish the floor in debating this amendment. Surely it's the government's intention to allow winery operations to continue, if they wanted to expand—

**Mr Delaney:** On a point of order, Chair: I understand where Mr Hudak is coming from. We appreciate his commitment to protecting the area he represents, which is largely agricultural, but he has not proposed a definition to the bill that covers the term he is proposing to introduce as an amendment. For lack of definition, I'd like to rule his undefined terms out of order.

**Mr Hudak:** The easy way to solve this is maybe asking even half the ministry staff who are in the audience today if—

**The Chair:** This is why I'm asking that you read your amendment.

**Mr Hudak:** OK. My amendment would read that under the definition of "urban uses," the words "value-added agricultural uses" would be added after the words "conservation uses."

**The Chair:** We've all heard the amendment. I guess the regulations will have to be defined on that. At the present time, we're not going to pass the whole afternoon on this point. You could have this in your amendment and then the committee will vote on it.

**Mr Hudak:** Fair enough, Chair, but I'm seeing a pattern develop and I'm worried that this one is not going to pass.

**Interjection:** No need to worry.

**The Chair:** I'd just like to get the wording first. Do you want to read it again?

**Ms Churley:** Can I have a point of order first? With all due respect—again, I guess I'm trying to help the

government members out here—I want to move on with some of my important amendments.

*Interjection.*

**Ms Churley:** I know, but listen to me. These are redundant. I know he's doing each one separately, but what he's doing is reintroducing in pieces something from a previous amendment that was voted down. It's a direct point of order. I don't want to be shutting down democracy, God forbid, but I honestly believe there is a real point of order here that he's now reintroducing through the back door—yes. These have already been defeated.

**Mr Hudak:** Chair, on the point of order: With respect, I did ask the government members if they disliked all of them in the first motion. They didn't reply.

**Ms Churley:** It was voted down.

**The Chair:** We voted on that. I fully agree with that, Mr Hudak. We voted against it. We took a position. You're coming back, section by section, with this amendment, which I will rule out of order now.

**Mr Hudak:** With respect, earlier on when I talked about golf courses—

**The Chair:** I have gone a little too far with this one. You're trying to come back, word by word, with the amendment. I'm ruling it out of order. I'm moving on to the government amendment.

**Mr Hudak:** On a point of order, Chair: I move the amendments that I bring forward, the motions, with full sincerity, because I believe there are stakeholders who are interested in these—

**The Chair:** I'm calling it out of order at the present time because you have done it already.

**Mr Hudak:** With respect, Chair—

**The Chair:** What is different? I'm telling you, if it is on the same issue, you'll be out of order.

**Mr Hudak:** Chair, if you could help me understand. You had ruled earlier on with respect to golf courses. That was included in my first amendment.

**The Chair:** I shouldn't have discussed it. I made a mistake, probably, by taking each word one by one. I'm getting a little smarter now.

**Mr Hudak:** Let me understand it and get some clarity, then. You ruled that it was in order for golf courses—

**The Chair:** I'm calling it out of order at the present time, Mr Hudak. I'm saying that you're out of order at the present time. I'm not taking your point of order. This is it.

I'm moving on to the government amendment to section 1.

Those in favour of the amendment?

**Mr Hudak:** Chair, I want to speak on the motion, then.

**The Chair:** Go ahead.

**Mr Hudak:** I appreciate the opportunity to debate amendments to motions that I bring forward. I think it's important that there is full hearing on those motions, and I enjoy government comment on those motions when it does happen.

You have seen fit to rule a particular motion out of order. I understand that prevents me from bringing forward the other parts, so we'll never have a vote as to what the government's opinion is on recreation- and agriculture-based tourism uses, for example. Nor do I know if they dodged the question about the wineries or cherry-pitting operations, for example, for the processing operations. So it's not clear to me in the definitions that exist today about urban uses and whether some of the uses that I mentioned and had tried to protect in my amendment to the motion will be adequately covered by the government's language in their existing amendment. I don't think they are.

Maybe I could ask that question again with respect to wineries. Is the government satisfied that winery operations—the pressing side, the retail side, winery restaurants—would continue to be allowed outside of the urban area, if this bill passes, under the definitions you bring forward?

**The Chair:** Mr Hudak, this was also already mentioned, about the restaurant in the zone.

**Mr Hudak:** Chair, with respect, I'm simply debating the motion that's on the floor. I've asked a question of the government members. I'd enjoy a response to that. I think it's a valid point, and I have a great concern on behalf of that industry that we may see that industry shut down in terms of any growth or expansion if this bill were to pass. I think this informs how I vote on the government's motion. It's an important issue and I would like an answer to it.

**The Chair:** I'm not going to ask any member for an answer. We have already given you an answer on this one previously.

**Mr Hudak:** Chair, with respect, I don't think they did give me an answer on it. I asked that question very clearly and never had the courtesy of a response. If you don't want to answer, tell me you're not going to answer. But I would like an opinion from the government side before I vote on this motion, whether their intent is that wineries could continue to grow, to expand, or new wineries, outside of the urban areas in the greenbelt area if this legislation were to pass.

**The Chair:** Greenbelt area? We're just talking about the greenbelt area. That has nothing to do with the rest.

**Mr Hudak:** No, Chair. I'll make sure the question is clear. Would wineries continue to grow, to expand, or new wineries, whether that's the pressing operation, the commercial retail operation or the restaurant operations in the greenbelt study area outside of the urban boundaries if the government's motion were to pass?

**The Chair:** Ms Van Bommel, can you answer this one?

**Mrs Van Bommel:** What you're asking about is not within the scope of this bill. What we're looking at in this bill is a time out to do the study. Those issues will be dealt with in that study.

1640

**Mr Hudak:** No, I don't think that's true.

**Mr Delaney:** Question.

**The Chair:** I have a question first from Ms Churley.

**Ms Churley:** I had asked this earlier. Just briefly, referring specifically back to your amendment, where it talks about clarifying the language. I just want to know what your definition of—perhaps the staff can answer this—"future urban use area" is. What is that referring to?

**Ms Barbara Konyi:** "Future urban use" is a land use designation that appears in some municipal official plans. So it would be an urban-type designation.

**Ms Churley:** OK. That's good. Thank you.

**Mr Hudak:** Chair, just to continue my debate on this first motion, the definition we have here is "non-agricultural commercial." In my view, a winery is agricultural commercial [*Inaudible*].

**Mr Delaney:** On a point of order, Mr Chair: I'd like to call the question.

**Mr Hudak:** I don't think that's in the rules, with respect, Chair. I don't know why the government members, who campaigned on allowing greater debate and more of a role for MPPs, would want to shut down my inquiries on behalf of an important industry in Ontario.

**Mr Delaney:** Mr Hudak has made his point. We understand very clearly the point he's made, and I don't believe there is any ambiguity left. We'd like to call the question on the amendment to section 1.

**Mr Hudak:** Chair, I think I had the floor. The definition you use in legislation—

**The Chair:** Mr Hudak, please, I think we've had enough debate on this at the present time, and we'll proceed with the question.

**Mr Hudak:** Hold on a second. Chair, under what rule or—help me understand—

**The Chair:** You keep coming back with the same issue. We talked about the restaurant. Any restaurant facility within the greenbelt is entitled to continue. You all—

**Mr Hudak:** Chair, with respect, I believe the role of the Chair is to help facilitate debate. I appreciate the fact that you might not agree, as Chair, with the points I'm bringing forward, but nonetheless I am going to stand strongly on my right to bring these points forward. I've asked the question a couple of times, and we get into procedural wrangling.

All I'm simply asking is, in the government members' opinion—whether it's individually or as a cohort—how do wineries fit into the definition? Currently things that are non-agricultural commercial would be defined as "urban use" and therefore could not occur outside of the urban area. A winery, clearly to me, is agricultural. A winery retail operation or a winery restaurant operation or such would be agricultural commercial.

**Mr Delaney:** The definition of "winery" is outside the scope of the bill. We ask, please, if Mr Hudak would stay within the scope of the bill. Within the scope of the bill, I again call for a vote on the amendment for section 1.

**Mr Hudak:** Chair, I'm still continuing my debate. Of course this is within the scope—



**The Chair:** Mr Hudak, I'm going to call the vote at the present time because you keep coming back—I'm asking for a vote, Mr Hudak. This is it.

**Mr Hudak:** Chair, can you tell me where in the rules you can—

**The Chair:** I have the power to call a vote because I feel that what you're coming up with was already discussed. You keep delaying, coming back with the same issue, probably a different way.

**Mr Hudak:** Chair, help me understand, then. What was the answer the government gave as to how a winery would be defined under "agricultural commercial"? You made the statement earlier that you think they've answered my question and I keep coming back to it.

**The Chair:** It's in the Planning Act.

**Mr Hudak:** The reason I keep coming back to it is because I don't think I've had an answer.

**The Chair:** I'm calling for the vote.

**Mr Hudak:** Chair, please help me understand. On what grounds—

**The Chair:** I'm calling for the vote. This is it. I think we've—

**Mr Hudak:** Chair, with respect, I think I should understand the rules, and you've been around longer than I have. On what grounds can you call the vote when I have the floor for debate on the current motion on the floor? I have some questions I want before I vote on it. I don't seem to be getting a response. We get caught up in procedural wrangling. I'd like to know—

**Mr Delaney:** For the third time, the definition of a winery is outside the scope of this particular act. Again, I ask for a vote on the amendment in section 1.

**Mr Hudak:** Chair, I would like to continue to debate on this particular motion, because I don't think my questions are being answered, and I have other questions as to what the government's intent is with this particular motion. I'm simply trying to bring forward some points that we've heard on committees and we've heard from constituents. If they get voted down, they get voted down. The government members have chosen to engage in procedural wrangling to not have these votes occur.

**Mr Delaney:** There is no procedural wrangling going on, save what you're doing. A call for the vote is itself not debatable. We'd like to call for a vote.

**Mr Hudak:** Mr Delaney, you've raised probably three or four points of order in the last five minutes. That, to me, seems like it passes the bar for procedural wrangling.

**The Chair:** Mr Hudak, I'm giving you a maximum of five minutes before we proceed with the vote.

**Mr Hudak:** Chair, help me to understand, before my five minutes begin, under what rules of this committee or decisions by the subcommittee or by the order from the House you can limit my comment on any particular issue to five minutes.

**The Chair:** I think it was clarified by Mr Delaney what the winery is—

**Mr Hudak:** But, Chair, you just said I was limited to five minutes of comment.

**The Chair:** Yes.

**Mr Hudak:** Is that a limit of five minutes of comment on the point about the wineries or about this motion as a whole?

**The Chair:** I'm giving you five minutes for discussion on this issue.

**Mr Hudak:** Which issue?

**The Chair:** Well, the amendment that you're talking about. If you don't know what you're talking about, you shouldn't be talking at all.

**Mr Hudak:** Chair, I'm not sure if you said I have five more minutes to talk about the winery issue, or five more minutes to talk—

**The Chair:** Five more minutes, that is it.

**Ms Churley:** On a point of order: To try to help move things along, this is not time allocated, is it? No.

*Interjection.*

**Ms Churley:** Sorry, I'm on a point of order. It's not time allocated. I don't believe Mr Hudak intends to filibuster.

Can I suggest something? My opinion is that I don't think you can restrict him to that as long as things fall within the rules here. I think what we need to do, though, is have Mr Hudak's questions answered precisely, either by staff or a parliamentary assistant; and then, once that answer is given, try to move on, whether you like the answer or not. I'm just trying to help things along here.

I think you should ask Mr Hudak a clear question and that a clear answer be given. Then try to move things along, whether we like the answer or not.

**The Chair:** I agree with this.

**Ms Churley:** OK. Is that a good way to proceed?

**The Chair:** Yes. Can you ask the question now? Repeat that question so they can answer, then we'll carry on.

**Mr Hudak:** Fair enough, Chair. As I said from the beginning, my intent was simply to ensure that items are brought up for debate as amendments to this motion. I asked the government members which ones they did or did not like. I didn't receive an answer. In turn, I thought it was sensible to introduce them one at a time, which we could have been done with in five or 10 minutes, but the government members chose an alternative path. As a result, I think it's important that I get my views forward, if the government does not choose to comment on those areas.

I just think, having been on both sides of the floor, that I hope the members across will appreciate the opposition members' opportunity to comment on these bills. Hopefully, I would expect to get a fair and reasonable response from the government to our queries. If you want to vote my motions down because you don't like them, vote them down. But please don't tell me I can't bring them forward.

**The Chair:** What's your question?

**Mr Hudak:** I guess the point I'm trying to make, Chair, is one of rights of members to debate what they see fit, in response to what their constituents have to say and in response to the deputations that we have heard from across the province of Ontario. I think Ms Chur-

ley's point was an excellent point, that if we had simply debated the particular motions and voted on them, we would probably be much farther down the page. But we've been caught up in procedural issues.

Chair, I will, as an opposition member, stand up for my right, Ms Churley's right and the right of individual members across the floor to debate and bring forward views as they see fit. If we try to get muzzled by the government members, well, sure I'm going to push back against that. I think that's a reasonable thing to do, not only to protect my rights as a member, but to protect other opposition members and whoever is sitting in this place down the road.

My question was a very simple one. I'm concerned about the winery industry and associated industries. Wineries will have their press on site. On site as well will be their retail operations, in large part, unless they're a part of Vincor or Andrés. They have their independent stores, in addition. Many wineries as well will have a winery restaurant. They have commercial operations in retail and the hospitality sector.

My concern is that under the definition of the government's motion—the definition of non-agricultural commercial—either the winery, the winery restaurant or the winery retail area would be found to be strictly an urban use, and therefore we wouldn't see any more of these. Irrespective of what the next bill is, I'm concerned that in the here and now, the government, by bringing forward this motion, would say that these operations would no longer be permitted in rural areas, where they are commonplace, growing and a major source of jobs for the communities that I and other members represent.

1650

**The Chair:** Is there any answer from the government side?

**Mrs Van Bommel:** I'll give it to the staff for a moment.

**Ms Konyi:** I'm going to try. The definition of urban uses that's contained in the government motion speaks in broad categories of the uses that are typically found in municipal official plans and zoning bylaws. The specifics of individual wineries that you're putting forward—this bill is designed to work with the existing municipal planning system. It's difficult to pinpoint exactly on each winery in terms of what would be permitted, because it has to work with the municipal planning documents. Therefore, it may be permitted in one and not in another. It's dependent on how municipalities have defined that in their own official plans and zoning bylaws.

**Mr Hudak:** I thank the member of staff for the answer. If we included wineries separately in this definition, how then would it impact on local planning decisions? I take it from your answer that in some areas they may be allowed and in some areas they wouldn't be allowed, depending on the local plan?

**Ms Konyi:** Yes. In most cases I would suggest that wineries are agricultural commercial types of uses, but I can't say definitively in every municipality, say down in

the Niagara region, that they're all defined exactly the same way.

**Mr Hudak:** My view is to ensure that that type of business is protected, that it stays viable. Would the government entertain ensuring it does so by adding wineries specifically to what is excluded from urban uses, just to be sure that this business will be allowed to continue in rural Ontario?

**Ms Konyi:** It would inappropriately elevate a specific use like a winery in this definition, which is captured in broader terms, in terms of more land use categories. The fact that it's agriculture-related, it should not be caught by this definition of being considered an urban use.

**Mr Hudak:** An earlier question I had that maybe you could help me out with too is the status of the greenhouse industry, and whether non-agricultural industrial may inadvertently exclude greenhouses from a permitted use outside the urban area.

**Ms Konyi:** I suggest that the same answer I gave you with respect to wineries applies to greenhouses.

**Mr Hudak:** The last question I had on this particular section is that the government has included mineral aggregate uses as something that would not be defined as an urban use. Ms Churley brought forth an amendment to change that. Could I have a full understanding why the government feels it should be excluded from the definition of urban use?

**Ms Konyi:** Aggregate uses are typically found in municipal official plans in the rural areas. Secondly, the protection of mineral aggregates is included as a part of the provincial policy statement. It must be considered in light of all of the interests in that policy statement, but it certainly is a provincial interest. It must be balanced among all others. Therefore, it was appropriate to include.

**Mr Hudak:** We had some discussion about golf courses. With respect to greenhouses and wineries, your answer was that it's a local municipality that would determine an appropriate use. You're excluding mineral aggregate uses because you say it's a provincial use. What's the justification for lifting up golf courses above wineries and greenhouses? You mentioned you didn't want to bring up those two industries to a higher level; leave it at the municipal level. What's the purpose then of specifically citing golf courses not only as part of the motion but as part of the original piece of the bill? Why are golf courses in particular being cited?

**Ms Konyi:** Again, golf courses aren't an easy definition in terms of applicability across the greenbelt study area, and they often include large residential components to them.

**Mr Hudak:** But you do talk about mixed use commercial/residential, right? So that would cover the golf course: mixed residential.

**Ms Konyi:** Not necessarily.

**Mr Hudak:** You can probably phrase it that the residential part of golf courses would be excluded. I guess I'm trying to understand why golf courses particularly, given the logic of wineries and greenhouse operations, should not be cited specifically in the bill, because you're



elevating a particular industry and the government believes that should be best defined at a municipal level, under their own bylaws. What's wrong with golf courses? Why shouldn't a municipality make a decision about a golf course, similar to a winery or a greenhouse? The only industry that's being circled here is golf courses.

**Ms Konyi:** Golf courses are found in urban areas.

**Mr Hudak:** Yes, but so are greenhouses and wineries.

**Ms Konyi:** But they're more typically an urban use.

**Mr Hudak:** Maybe in some urban centres. A lot of golf courses in my area would be outside the urban boundary, I would suggest. Wineries and greenhouses can be within the urban area. So is there a better answer as to why golf courses are the only industry really cited here to be defined as an urban use, when my attempts to get wineries and greenhouses covered were rejected? Help me understand the logic.

**Ms Konyi:** I suggest it's the residential component that typically accompanies the golf courses.

**Mr Hudak:** But again, most of the golf courses in my area, which is part of the proposed greenbelt area, don't have a residential component. I know there are some new projects, and I would suggest probably you could somehow work a definition where the residential component was different from the golf course component, but if I look at Rockway Glen or Twenty Valley in the community of Lincoln, which would be covered by this legislation, they're golf courses. They're outside of the urban area. They don't have a residential component. So why would a new Twenty Valley, outside of the urban area, not be allowed? Why are golf courses particularly red-circled?

**Ms Konyi:** The golf courses that you mentioned are existing golf courses, so they won't be impacted.

**Mr Hudak:** No, just by way of example. It's something that's currently happening. If they wanted to do another Twenty Valley right next door, in the exact same circumstances, why is the government today saying that would no longer be allowed?

**Ms Konyi:** This is part of the temporary moratorium that would take place. It's just for a limited time. I can't say whether it would be excluded in the long term. It's just for the short term, to allow the minister to receive recommendations on what permanent greenbelt protection should be.

**Mr Hudak:** I appreciate your answers. I know it's a tough question to answer and it's unfair that I'm picking on you, but given the municipal affairs civil servants' responses as to why wineries and greenhouses were not specifically recognized, because it would be inappropriate to elevate a particular industry above the others—that was the logic—and secondly, they'd be best described in the local bylaws, a municipal decision—I don't agree with the logic. I would try to protect those areas, but I understand the logic. It seems to be consistent. The inconsistency that I don't understand is golf courses and why that particular industry is circled.

**Ms Churley:** You should ask a government member.

**Mr Hudak:** I know. As I'm saying, I'm moving away from the staff, because I know it's a—

**The Chair:** Please, yes.

**Mr Hudak:** I think it's obvious that it's a political decision. So help me understand the politics of why golf courses were mentioned specifically and other areas like wineries and greenhouses were not.

**Ms Konyi:** I have one more point on golf courses. Golf courses aren't agricultural uses and they do have an impact on the natural environment in a different way than wineries, as an agricultural use, do.

**Mr Hudak:** Yes, but aggregates might have a bit more of an impact than a golf course. In the opinion of the ministry, the aggregates have a—

**Ms Konyi:** But there's a provincial interest in the aggregates, though.

**The Chair:** Members are being called to the House for a vote. We will recess for 20 minutes.

*The committee recessed from 1659 to 1722.*

**The Chair:** I call this meeting to order.

**Mr Hudak:** Chair?

**The Chair:** Just before we proceed, as you can hear, there's another bell. We'll keep on going till the clock shows 20 minutes to go before the next vote.

**Clerk of the Committee:** Ten minutes.

**The Chair:** Ten minutes. What did I say?

**Mr Hudak:**

**Mr Hudak:** While I do have the advantage of the staff still there and the parliamentary assistant, conservation uses under your proposed amendment to the bill would still be permitted outside of the urban area. Can you help me understand what the definition of "conservation uses" would be? You were kind enough to help me out with non-agricultural commercial and non-agricultural industrial, but what's the government's intent by saying conservation uses would be allowed outside of the urban area?

**Ms Konyi:** Sorry, Mr Hudak, can you repeat your question?

**Mr Hudak:** I'm sorry. I'm trying to understand the definition. We talked earlier and you helped me understand what the intentions were of the words "non-agricultural commercial" and "non-agricultural industrial." The proposed motion by the government would take out of the definition of "urban uses," I think to make clear, that forestry uses, mineral aggregate uses and conservation uses would not be considered urban uses. We've already had a discussion and I understand the reasoning on mineral aggregate uses. Help me understand what "conservation uses" means.

**Ms Konyi:** Conservation uses were actually added to this definition to make it absolutely clear that they are not an urban use. Conservation uses are things like passive recreation, parks, conservation areas owned by conservation authorities, where they're natural areas that people could come and visit or that sort of thing.

**Mr Hudak:** So things that are normal inside a conservation area?

**Ms Konyi:** Yes.

**Mr Hudak:** I think the land covered by the Niagara Parks Commission—

**Ms Konyi:** Just to be clear, it doesn't necessarily have to be conservation authority conservation lands. It's conservation-type uses. It doesn't have to be owned by a conservation authority.

**Mr Hudak:** OK. But uses within a conservation authority's area would be covered by this? For the Niagara Peninsula Conservation Authority—for example, Ball's Falls conservation area, where they have tourism attractions, historic sites and that sort of thing—would the uses that are typical in the Ball's Falls conservation area be covered by the definition of "conservation uses"?

**Ms Konyi:** Again, as I said with respect to the wineries or the others, you're getting into very site-specific-type uses, where we're talking more in generalities, and they're related. It depends on how things are defined in the municipal planning documents.

**Mr Hudak:** Help me understand the definition of a conservation use, then. What is a typical conservation use that this wording would allow as not being urban use?

**Ms Konyi:** The things that I had suggested, sir, like passive parks, natural areas, or areas in municipalities that are set aside just for natural uses. They're not active areas where there are playing fields and things like that.

**Mr Hudak:** OK. Just to make sure I'm clear, the Niagara Parks Commission—I believe that's a conservation area, but I could be wrong. It's a beautiful conservation area from the shores of Lake Erie to Lake Ontario. On that conservation land, a number of uses exist: some commercial, and there are a couple of golf courses on that land as well. Is there a conflict between the definition of golf courses and conservation uses, or would things like golf courses within a conservation area that exist today, if something similar were to come forward, no longer be allowed?

**Ms Konyi:** I suggest that "conservation uses" in this definition is the broader term. You'd have to look to the municipal planning documents to inform you, because there are existing uses as well.

**Mr Hudak:** I know this is a very specific question and hard to answer, but I would expect that since golf courses exist in the conservation area covered by the Niagara Parks Commission, they would be allowed under the local municipality's bylaws; it would be the city of Niagara Falls.

**Ms Konyi:** I can't answer that, sir.

**The Chair:** Mr Hudak, we already got the answer that it is within the municipal official plan.

**Mr Hudak:** Right. I'm trying to understand if there could be some grey area between what could be a conservation use or a use on conservation land and the excising of golf courses from development in rural Ontario in the greenbelt area. I just want to make sure that there's no conflict here. If a golf course exists in a conservation area and it has passed muster under municipal bylaws, fantastic. I guess it would continue to be the same, or would golf courses in any shape or form not be allowed outside the urban boundaries?

**Ms Konyi:** I'd suggest it's related to the municipal planning documents. But if there is the desire and if it isn't clear, there are other remedies in the bill that provide for regulation-making powers to provide exemptions, if that were desired, if the government so desired.

**Mr Hudak:** I don't think they like golf courses, though, so I'm a little worried about it.

I note, Chair, as well, Mr Yakabuski, who is a member of this committee who unfortunately has not been able to be here because he's been debating the budget motion, similarly, as a representative of rural Ontario, had some concerns about the golf course definition and other definitions of urban use. I would be pleased to cede the floor to him at this time.

**Mr John Yakabuski (Renfrew-Nipissing-Pembroke):** Yes, I definitely have some concerns about whether or not this bill will basically make it impossible to establish a golf course that has no real detrimental effect, significantly, environmentally. This bill will make it highly unlikely that it would be allowed to be developed. I'm just wondering why they're specifying golf courses. To me, it's singling out one type of development as an urban use. I'd really like clarification on that, perhaps from somebody on the government side.

**The Chair:** I think we have answered that question already. It's within the official plan of the municipality and it is at times a non-conforming activity within the official plan. That is very clear. A golf course could be in an area that is not identified in the official plan. It is becoming non-conforming. But as long as it is in operation, you could operate it as long as you want to operate it.

1730

**Mr Yakabuski:** If it's currently there, it's not going to be shut down, we understand that, but what about any proposed golf courses?

**The Chair:** We got the answer already. We don't have to answer that one. We did get the answer.

**Ms Churley:** Do you mind if I intervene here for a minute? I think this is a point of order. I appreciate Mr Hudak's Columbo routine here, and I don't know what the obsession with golf courses is. Maybe you like to golf.

**Mr Hudak:** I'm a terrible golfer.

**Ms Churley:** Here's what I'd like to say: We're stuck on the first amendment. There are some critical pieces to that, and I'm disappointed that mine didn't get accepted, but I believe that for the sake of the people who are sitting here—to the Tories who are here—we need to move on. I don't know; I may even end up voting against this at the end of the day if some of my critical amendments aren't accepted. I think there are some serious holes in this bill. But I do believe for the sake of the people who have come down here and want to get moving on this, we should now proceed, move on and get going on some of the more substantive amendments that are coming forward.

Once again, I feel I'm in a difficult position, where I'm sort of helping out the government here, but I'm also



trying to help out the people who have been working very hard on this with both opposition and government to try to get the best legislation possible. I would ask—whether this is a legitimate point of order or not, I'm not sure—if we could try to find a way, Mr Hudak, to move on.

**Mr Hudak:** On the point of order, Chair—

**The Chair:** Just to answer Ms Churley's point of order, because of the fact that we did not consider a time allocation, there is absolutely nothing I can do at this point.

**Ms Churley:** Which I pointed out earlier and which is why I'm appealing, therefore, to the Conservative members to be somewhat reasonable in proceeding.

**Mr Hudak:** I appreciate Ms Churley's points and I do think I made a very reasonable request to the government members on my original amendment to the motion. The government members chose to engage in what I would call procedural wrangling to avoid comment and to avoid separate votes on those areas. I don't think those votes would have taken much time, but we spent a heck of a lot of time debating whether the motions were in order, what's not in order, how much time I have to speak, do I have five minutes to speak, is it five minutes on a particular issue, five minutes per issue and, unfortunately, time has gotten away from us. But I do think it's important, based on—

**Mrs Van Bommel:** I can't believe you said that with a straight face.

**Mr Hudak:** I hope I didn't understate that. Time is—

**Ms Churley:** That's the Columbo routine. Would you agree that's a fair comment?

**The Chair:** I said we would recess when the time clock was showing 10 minutes, so we will recess for another 20 minutes and then we will come back to this room.

**Ms Churley:** Then it's over.

**Mr Hudak:** And then we're back on Monday?

**The Chair:** We set aside two days. If it is agreeable to the whole committee, would you like to recess for 15 minutes?

**Mr Hudak:** No, I need my full 20.

**The Chair:** You need the full 20. Remember, we set aside two days for this bill. I call a recess—

**Ms Churley:** Before we recess, can we clarify what that means? The bill is not time allocated so, granted, as long as there are reasonable questions and comments, you can't cut that off. But if we're not finished within the two days, we can continue.

**The Chair:** It's got to be discussed amongst the three leaders.

**Ms Churley:** I understand that.

**Mr Hudak:** House leaders or—

**The Chair:** House leaders, and then it comes back to the subcommittee first.

*Interjections.*

**The Chair:** I'll let you know on the way back.

*The committee recessed from 1735 to 1756.*

**The Chair:** I call the meeting to order. Mr Hudak had the floor.

**Mr Hudak:** Mr Yakabuski had to go back to the House for debate, so maybe we'll let the issue of golf courses drop for the time being.

The other part is the term "forestry uses"—I think I'm pleased to see that the government has put this as part of their motion, but I just want to make sure I understand. I think we've received at least one letter from a deputant talking about logging operations in the area and about the ability to sell firewood and such. Some clarity as to what is meant by forestry uses according to the motion on the floor—if either the parliamentary assistant or one of the members or the support staff from the Ministry of Municipal Affairs and Housing could help me understand what is meant by including "forestry uses" outside the definition of urban uses. What are some typical forestry uses that would be allowed outside the urban area if this bill were to pass?

**Ms Konyi:** Mr Hudak, it would be the same idea as with the conservation uses and others: They're not intended to be captured as urban uses. They are outside the urban areas, and they are typically defined in municipal official plans. There are things like urban forests—sorry, not urban forests, just typical forests. They would vary by municipal planning document.

**Mr Hudak:** Is this like a forestry operation? Is it simply woodlot management? Is it personal use firewood or if you have a commercial operation selling firewood from your woodlot?

**Ms Konyi:** It's the same question, sir, and it varies by municipality.

**Mr Hudak:** Do some municipalities allow—is a full logging operation something that would be permitted?

**Ms Konyi:** It depends on the municipality, and there are a number of them in the greenbelt study area.

**Mr Hudak:** Maybe, to the government's intent, if somebody were to read "forestry uses"—and having had the pleasure of being Minister of Northern Development and Mines and seeing some of the forestry uses in northern Ontario—is that what's contemplated? Are we talking about full logging operations and such, or is there some small woodlot management? I think Ms Churley would probably have some concerns too about the definition of forestry uses.

**The Chair:** I think we've got the answer to that one already. If it is identified in a municipal plan, also in conservation, that's where it will be identified. That is the definition of forestry within the municipal official plan.

**Mr Hudak:** Chair, I appreciate your help and your clarification. I don't have the same familiarity as staff does with what's typically in a municipal plan. Is a full-blown forestry operation—the harvesting of logs, sawmills and such—a forestry use that would be allowed in the legislation, or is that something that would not be allowed?

**The Chair:** I think you're out of order on this one, because you've got the answer already. You've got the answer already. Don't answer that one, please.

**Mr Hudak:** Oh, Chair.

**Ms Konyi:** It's the same question.

**Mr Hudak:** Is it? So your answer is, you don't know if a full-blown logging operation would be considered a forestry use or not?

**Ms Konyi:** It varies by municipality.

**Mr Hudak:** You're not aware of any municipalities that would—

**The Chair:** It being 6 o'clock, this meeting is adjourned until June 7 at 3:30 in the afternoon.

*The committee adjourned at 1800.*









## CONTENTS

Wednesday 2 June 2004

**Greenbelt Protection Act, 2004, Bill 27, *Mr Gerretsen* / *Loi de 2004 sur la protection de la ceinture de verdure*, projet de loi 27, *M. Gerretsen*.....** G-401

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Mr Tim Hudak (Erie-Lincoln PC)

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G-17

G-17

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Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 7 June 2004

# Journal des débats (Hansard)

Lundi 7 juin 2004

**Standing committee on  
general government**

Greenbelt Protection Act, 2004

**Comité permanent des  
affaires gouvernementales**

Loi de 2004 sur la protection  
de la ceinture de verdure



Chair: Jean-Marc Lalonde  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 7 June 2004

Lundi 7 juin 2004

*The committee met at 1534 in room 151.*

## GREENBELT PROTECTION ACT, 2004

LOI DE 2004 SUR LA PROTECTION  
DE LA CEINTURE DE VERDURE

Consideration of Bill 27, An Act to establish a greenbelt study area and to amend the Oak Ridges Moraine Conservation Act, 2001 / Projet de loi 27, Loi établissant une zone d'étude de la ceinture de verdure et modifiant la Loi de 2001 sur la conservation de la moraine d'Oak Ridges.

**The Chair (Mr Jean-Marc Lalonde):** I would call this meeting to order. We will resume debate on motion number 1, which was moved by Mr Delaney. Mr Hudak had the floor. I would just ask that we try to get co-operation to get this going. I don't want to rush it through. I want to give everyone a chance to debate this or have questions, so I will pass this on to Mr Hudak.

**Mr Tim Hudak (Erie-Lincoln):** I do my best to be co-operative and at the same time bring issues of concern of the different deputations or other stakeholders, as well of course as constituents, since my riding is dramatically impacted by this bill, and there may be other members as well whose ridings are directly and significantly impacted by this bill. I will do my best to balance both of those issues.

I think I actually got through most of the questions I had with respect to amendment 1 on section 1 of the act with respect to defining "urban uses." I made every effort to get a number of items protected with respect to existing uses that are quite common in the greenbelt area to date, such as greenhouses, value-added agricultural and recreational uses, and other small tourism uses, like bed and breakfasts, for example. However, most of my amendments—all of my amendments, sadly—did not pass, as well as Ms Churley's particular amendments.

I think there is something that is good in here, as I mentioned, in terms of adding things like mineral aggregate uses. I can understand from my questions last time on forced uses and conservation uses why the government had put those forward. So I think there is improvement in this section, but not to the degree that I think adequately reflects what would be a truly functioning greenbelt area, and in particular how it addresses agricultural issues. So upon reflection through the

weekend, I think I will have to vote against this particular amendment the government has brought forward.

**The Chair:** Thank you, Mr Hudak. Ms Churley.

**Ms Marilyn Churley (Toronto-Danforth):** Just briefly, if I recall correctly—it feels like déjà vu all over again all of a sudden—at the last meeting we did vote on my amendment, did we not, and it lost? Am I correct in that?

**The Chair:** It lost. That's right.

**Ms Churley:** Sadly, therefore, I just want to make it clear that I will be voting against this section because of the concerns I outlined in my amendment. In my view, this is a clear gift to the pits and quarries. As Mr Hudak pointed out—not that I agree with him by any stretch of the imagination—there seems to be some cherry picking in terms of, for instance, golf courses being left off, which I support, but at the same time the pits and quarries being in. So I have a real problem, as I stated earlier, with the justification for who's in and who's out and the detrimental impact that pits and quarries can have, and also not knowing how many are in the pipeline and how much land is going to be affected. Therefore, I will be voting against this, and I would ask for a recorded vote.

**The Chair:** Any other comments or questions? If not, I would proceed with the vote on the government amendment. In favour?

**Ms Churley:** I asked for it to be recorded.

**The Chair:** Yes, a recorded vote, please. I'm sorry.

## Ayes

Arthurs, Delaney, Duguid, Parsons, Van Bommel.

## Nays

Churley, Hudak.

**Ms Churley:** For different reasons.

**The Chair:** The motion is carried.

**Ms Churley:** I just wanted to be clear here.

**The Chair:** Shall section 1, as amended, carry? Against? Two against. It is carried.

**Mr Hudak:** Recorded vote, Chair.

**The Chair:** Too late. Sorry. It is carried. Now section 2, an NDP motion.



**Ms Churley:** I move that section 2 of the bill be amended by adding the following subsections:

“Purpose of study area

“(2) The purpose of establishing a greenbelt study area is to ensure that the land in that area forms the basis for developing a larger, connected network of protected areas across the province of which the greenbelt area will form a part.

“Purpose of task force in respect of fringe areas

“(3) The task force carrying out the study of the greenbelt study area shall, in respect of the fringe areas bordering the greenbelt study area, determine how to prevent urban sprawl into those areas by use of public transit planning along existing urban corridors and by concentrating urban growth within existing settlement areas.”

1540

**The Chair:** Questions or comments? The government side? None?

**Ms Churley:** I first would like to comment on why that amendment's there.

**The Chair:** Sorry.

**Ms Churley:** That's OK. One of things that we've heard a lot about in the public hearings and in these meetings is what we now fondly refer to as “leap-frogging” development. We all know what that means, and it's already starting to happen, as we know, in the Simcoe area. I will be coming forward with an amendment later on that includes some of those areas, but in the meantime, of course, I'm adding this to the purpose clause.

I'm hoping very much that I will get support from the Liberal members on this particular amendment. I would say, and we'll see what happens later, that if the government is not willing to put the teeth in the actual legislation to stop this leapfrogging and expand the area, the least we can do is put it in the purpose clause to show that the government has a genuine interest in stopping urban sprawl. As we know, the existing boundaries do not cover the areas that badly need to be covered right now.

So I would just urge all members to support this. It's not, as in the other amendment I'm making later, necessarily putting specific land areas in the bill, but it's making a very strong purpose clause so that everybody understands that the government's legislation and commitment to stopping urban sprawl is for real.

**Mr Hudak:** I think Ms Churley brings an important point forward. I don't know if the government members care to address her particular concern. I think it's an issue we heard quite commonly—

**Ms Churley:** From all sides.

**Mr Hudak:** —as Ms Churley points out, from all sides. There was a significant variety of deputants who had referenced the notion of leapfrogging. I think there was a variety of approaches that were posited by those particular groups. I think Ms Churley's amendment tries to make sure that the government, if this bill is passed as amended, would be able to address those areas that are on

the other side of the greenbelt, or—I think she uses this language—on the fringes of the particular greenbelt.

Whether it was groups on the environmental side or on the development side, they named a number of areas outside of the greenbelt study area—I think Guelph was one; Simcoe county was another; maybe Kitchener-Waterloo—that are already seeing a significant spike in the price of vacant lots and, I think, a price spike on resale homes as well.

So while I understand that the government feels they're using what they call a “time out” to try to halt development, and I guess the minister does that to a significant extent in the areas described by the two ministerial zoning orders, no such halting effect is occurring in the areas that I mentioned or that the deputants had brought forward.

Perhaps I could understand from the government members, the parliamentary assistant or some of her colleagues how the government seeks to address this notion of the impact of leapfrogging that Ms Churley's amendment seeks to cure or address or limit.

**Mrs Maria Van Bommel (Lambton-Kent-Middlesex):**

We certainly are concerned about the issue of leapfrogging, but I think that's really more for the discussion on the actual greenbelt strategy, which will take place in the future. I think at this point this is really a short-term bill. We are just trying at this point—as Mr Hudak has stated, this is a “time out.” We're establishing a study area so that we can take into consideration those very issues.

**Ms Churley:** If I may, the problem is that that's not going to work. What has happened is that this greenbelt legislation has put a freeze on certain lands. So what's happening now, as we speak, is that there are developers buying up land as fast as possible, right now. So it's going to be too late to stop a lot of this development unless these lands are added to this freeze for the time being. It's really urgent, or what you're going to end up having—I can read a quote for you.

There are many quotes from people who came in to speak to the committee from all sides. In fact, interestingly enough, some of the developers whose lands haven been frozen for the time being were agreeing with this, that this is a particular problem.

For instance, Dr Mark Winfield from the Pembina Institute said that “significant development pressures are also emerging in the areas immediately beyond the greenbelt study area to be established by Bill 27. These potential developments highlight the possibility for leapfrog low-density urbanization in response to the greenbelt initiative.” Then he goes on to say, “Such development patterns would defeat the underlying purposes of the greenbelt initiative of containing urban sprawl in the region.”

That is a pretty damning quote, and the reality is, if this bill is not amended to include these lands like Simcoe, which has been held up as an example where it's happening now, as we speak, then unfortunately this act is not going to achieve its purpose. It's really critical that



this amendment be made for the act to actually achieve what it wants to do. In fact, as a result of this being left out, we could have worse urban sprawl in that you're leaping forward and there are more roads that have to be built, people are going to have to travel even further to get to work, more smog, more car use—all of these things.

It's by now a no-brainer. We have to amend this bill to make sure that it actually achieves the purpose that it states it's setting out to do.

**Mr Hudak:** If the parliamentary assistant wanted to respond, I could go after her. That's fine.

**Mrs Van Bommel:** You go ahead. If you're going to discuss the same issue, we'll try and get responses in one.

**Mr Hudak:** I'll wait for the parliamentary assistant's response.

**Mrs Van Bommel:** We're going to be addressing the whole issue of leapfrogging through the growth management planning that we also have on the go. So it's not that we're ignoring that whole issue. We're recognizing that fact, that that's an issue.

**Mr Hudak:** Just as a follow-up to the parliamentary assistant's response to Ms Churley's inquiry, I do think it's a serious issue, because it was brought up not just by one or two, but a significant number of deputants from various approaches to the bill, whether they're in favour of Bill 27, whether they're against Bill 27 or those who are somewhere in between. I think it's important for us to know before we're asked to vote on this amendment or on the bill as a whole to refer back to the House what the government's intent is to address this repercussion as a result of the MZO in Bill 27.

I would argue, and I think Ms Churley would agree, that this sort of leapfrogging effect, the price spikes that we're seeing in these other areas, would likely not be occurring to the same degree if Bill 27 and the MZO had not been put forward. So this bill and the minister's policy statements and his zoning orders have effectively caused this problem to happen, this issue to transpire.

The government has talked about affordable housing and allowing for more options, more variety—that's what the minister has tended to say—of housing options for people. Particularly, I think, his target or his concern in the House seems to be low-income or those of modest means to be able to find a home—granted part of the approach, I think, is for you guys to help create more housing in the Toronto area.

Effectively, you're freezing out development in the greenbelt study area, with the exception of the existing urban boundaries. But what I don't understand is, if we're seeing spikes of prices of vacant land in this leapfrog area, the area just outside of the greenbelt study area, then I've got to believe that that is passed on to individual homeowners through a higher cost for their home. I do think that while some will choose to live in a dense urban area, there is also going to be a number of individuals and families who are going to like having a backyard and a garden. They like to have space if they're starting out, particularly those starting out with families,

and may want to have more room for the kids to play etc. So despite the efforts the minister may make in the big city, I think you're still going to have a significant demand for these types of residential developments, whether they're in the greenbelt study area or not.

I guess I'll ask back to the parliamentary assistant, how do you reconcile the spikes in prices we're seeing on vacant land with the government's goal of creating affordable housing for working families or individuals in the province?

1550

**Mrs Van Bommel:** Quite frankly, I haven't seen any real evidence that that's the case. In terms of land values going up, they're going up across the province. Certainly in my area it has done the same thing and it has nothing to do with housing or potential housing. It's a case where there seems to be an upward pressure on real estate values.

**Mr Hudak:** In response, I do believe there were a number of deputations—and I apologize, I don't have all the statistics at hand. But I do recall that a number of them—I think the UDI, some homebuilders and even on the infrastructure side too, perhaps the road-builders or the water and sewer groups—had mentioned this and they actually brought forward specific numbers to show the spike in prices of real estate in what Ms Churley is referencing as sort of the fringe of the greenbelt area. Maybe staff could help me out with this. Am I right that we've seen a spike that is greater than the average real estate spike for land use caused by Bill 27?

**The Chair:** Is staff in a position to answer that question?

**Ms Barbara Konyi:** No sir, I don't have all the answers to the question of land prices. In fact, they vary by areas of the province.

**Mr Hudak:** As I said, it's hard to remember all of the different advice this committee has received, but I thought I remembered specifically that the Urban Development Institute had brought forward a chart indicating how much prices have gone up in some areas just outside of the greenbelt study area. Whether it's ministry staff or legislative staff, can we recite those numbers—

**The Chair:** I believe, Mr Hudak, that every one of us received a copy of that when they made their presentation. I remember seeing it, but I don't have it with me here. I'm sure you must have gotten it.

**Mr Hudak:** I do, and I apologize. You try to keep track of all these data as best as possible, Chair, but I don't think I have it at hand.

The main point I was trying to make was, whatever the numbers, I think there was quite credible evidence that the real estate values of vacant land for sure, if not resales, saw a spike in prices that was significantly greater than what we saw in other areas. I think the point made was that this has been caused by a lack of a comprehensive approach by the government to date. They've done the MZO in the particular geographical area, but they have not done so or have come forward with a public process for the other parts of the province,



which underlies Ms Churley's concern and the reason behind her particular amendment to the bill.

While I think Ms Churley is right on in terms of this problem that has been caused, I've said many times in committee, and I think the OPPI has said the same, that a greenbelt by itself is not an effective planning tool, that you need associate tools, whether it's support for our farmers, whether it's transportation networks, be they highways or public transportation, as well as an approach to protected areas around the greenbelt. Without those types of tools, this is not an effective policy for land use.

The homebuilders aren't just building these homes for the heck of it, because they see a greenfield and they want to put a bunch of houses on it. My guess would be that they're companies out to make a profit. They're responding to consumer demand. They said earlier that there are consumers who like to have some space for their home. They might want to get out of the big city to raise their families or to retire. As I said, they're responding to consumer demand.

I do have the UDI submission here. They're talking about the price spikes. These are from 1995 to 1999, so not as relevant. Let me give you an example. They had single-family lots from 1995 to 1999 up 35%. This is in reference to the Portland area. So they're saying that they've seen a spike in prices there.

But more relevant to our committee, on page 11 of their report they talk about the increase of a town home per lot price, from Q4 of 2002 to Q4 of 2003, around the time that the minister did his MZO and brought the legislation forward in the House. Richmond Hill would be an area that you'd reference, I would think. My geography is not perfect, but I think that is one of the areas where you'd see this cause and effect, a 40% increase in the per lot prices—Pickering, 48.3%; Oakville, 45.5%; Vaughan, almost 40%, a 38.9% increase.

While I recognize that land costs are going up across the province as a whole in most areas, not everywhere—certainly that's not the case in northern Ontario and some parts of rural Ontario, sadly—this definitely seems like evidence that the greenbelt legislation has caused these spikes in areas surrounding the greenbelt. I don't think that in Niagara we've seen that level of increase to date.

Given that, could the parliamentary assistant let us know the next phase you had referenced, in terms of your growth management plan. Will that be coming forward at the same time as this legislation? Are the results of that going to be publicly announced in the very near future, or do we have some time to wait about this, and then see the price effects continue?

**Mrs Van Bommel:** I just want to take this back. I think we're going off into an area that—we need to just recognize the fact that this is a short-term bill. This thing is going to sunset in just over six months. People—developers, whoever—can buy land, and people are free to sell their land. Just because a developer has acquired a piece of property, that doesn't necessarily mean that they can immediately build on it and within six months have something there.

This is just a time out. We need to be able to study those very issues that we're talking about. We are concerned about leapfrogging but we don't want to move very quickly. We need to have that time to study this. That's the whole point of this bill. This is a time out to do the proper studies.

**Mr Hudak:** I appreciate the parliamentary assistant's point, but it is a time out of sorts within the greenbelt study area. I think you could try to make that case, where the MZO in this legislation would halt development in the area that's mentioned. In schedules 1 and 2 in the bill I guess is where we would get the specifics.

What Ms Churley is doing is bringing forward a point that says that in areas outside of the greenbelt, this so-called time out does not exist, that the market forces continue, that we're seeing spikes in the price of land. I think it's an important point to make that homebuilders are not just purchasing land outside of the greenbelt area for sport. I think they're responding to market demand and a genuine concern that residential opportunities will be significantly limited by this bill and its successor bill.

I know what you say: It's a bill that is scheduled to be repealed on December 16, 2004. But its successor, I would assume, will be brought forward around that time. We're generally sitting at that point in time. I think, for consistency's sake, the successor bill would likely be introduced for at least first reading on or before that date. Is that the intention of the government?

**Mrs Van Bommel:** Yes, it is.

**The Chair:** Ms Churley, you had a comment?

**Ms Churley:** Do you mind? I'm happy, in the interests of getting through the bill, to let this go to a recorded vote in a minute if that's OK with Mr Hudak. But I just want to make these final points very briefly and make it clear again what I'm trying to do in my purpose statement.

**1600**

In order for the greenbelt to be successful in its intent to stop urban sprawl and protect prime farmland in environmentally sensitive areas, it's got to be part of a larger connected network, which we heard about, a unified natural heritage system that is now referred to as NOAH. Remember, we heard a lot about NOAH throughout the hearings? The greenbelt is to serve as the spine of this network. That's number (2) of my amendment.

Number (3) makes it an explicit purpose of the Greenbelt Task Force to devise strategies to stop urban sprawl through measures such as transit planning, concentrating urban development in existing urban areas and planning development at transit-friendly densities. That's pretty motherhood as far as I'm concerned when it comes to this bill in terms of the purpose the government said it was trying to achieve here.

The last point I want to make is in response to a statement made by the parliamentary assistant about why Simcoe and other areas outside the belt have not been included, and that is, it's not included, it doesn't stop developers from buying up, but it doesn't mean that six



months or whatever from now they might be told they can't develop.

I've got to tell you, I've got a problem with that because later on you're going to make the same argument, I think, to an amendment I'm going to make to the Niagara Escarpment piece, which I'm trying to make retroactive, which your amendment doesn't do, which is the problem, as you know. I've been told that one of the reasons it's not being made retroactive is that there could be lawsuits. So you're risking that by excluding Simcoe and other areas, by making people—developers—believe they can buy up this land. I think you're on a very dangerous path to not be more comprehensive in this bill.

Having said that, I've done my best to make my case here and the case of many people who came forward. I would like, if Mr Hudak and others are ready—oh, he's not. OK. I would ask that you consider this to be a major problem with your credibility in terms of bringing this bill forward, if this amendment is not accepted.

**Mr Hudak:** I guess to Ms Churley's point and my own: Why the dichotomy of approaches? Why this particular approach on the areas outlined in schedule 1, which I think we've argued—and haven't heard contrary arguments—has now impacted other parts of the province? Why wouldn't there be a more holistic approach to planning if you have the growth management plan that I think is coming from Mr Caplan's ministry, the public infrastructure renewal ministry?

They're working on the one plan in terms of how—I guess what is commonly known as smart growth, right? How can we grow our communities for job creation and for residential development etc, at the same time making sure that important greenspace and environmentally sensitive areas are protected? What's important, as I've brought up in the committee, and Mr Hardeman, our critic for agriculture and food, has talked about in the Legislature as well, is that you want to make sure you have the supports in place for agriculture. I assume that Mr Caplan's approach, the growth management strategy—is his parliamentary assistant on this committee? No? OK. He's looking at growth management in a more holistic manner, and I think he's also looking at transportation nodes, where future highways will be, public transit etc.

So why in particular did the minister list the communities in schedule 1 for one type of treatment, when other parts of the province, especially those that are juxtaposed to the greenbelt study area—why did he choose an alternative method to approach those areas?

**Mrs Van Bommel:** We felt there were greater pressures in those particular areas. There are great pressures right across the province, but we felt the pressures there were more immediate. We've set out to create a moratorium for that particular area so we would have the time to do the studies that we need to do.

**Mr Hudak:** Maybe ministerial staff can help me with this. I think I pointed out, and correct me if I'm wrong, that UDI in a presentation pointed out that we're seeing a great deal of pressure in areas that aren't necessarily

covered by the MZO. So the pressure you described existing in the greenbelt area has now seen an intensification in the areas that are on the fringe. So why would you not include those other areas as part of your bill if your goal was to relieve pressures?

I'd argue—and I don't have the statistics at hand, but I think that I can say with some confidence—that the pressures in the area in the GTA outside of the greenbelt are much greater than the pressures that we have seen in the Niagara Peninsula in the areas that are covered by schedule 1. Did the government set a particular parameter, or a test for pressures, in designating these areas? How was it decided to include particular communities and not others? What was the benchmark that underlies schedule 1 in the bill?

**The Chair:** Can anyone answer that one?

**Ms Konyi:** In my understanding, the areas for the greenbelt study area were chosen not only to deal with growth pressures, but also to deal with the preservation of agricultural land; for example, the tender fruit and grape lands down in Niagara. So it flows largely from the government's platform.

**Mr Hudak:** Yes. That's what I anticipated. It's a bit of a political commitment, which makes it a bit difficult for ministerial staff to address. I do think that this was in fact one of the commitments that you've managed to keep from the campaign promises. So I think the then opposition leader, now Premier, had talked about a greenbelt area and you described in your campaign documents a certain geography that covers these areas.

But am I to understand that for the Niagara Peninsula—I'm sorry to be so concerned about that particularly, but it is where I get a lot of feedback on this bill, coming from Niagara. You talk about protecting the tender fruit land, and that's a very important and enviable goal. I don't know if I necessarily agree with the route that you're taking today. I think there are a lot of unanswered questions on the economic levers. But do I understand correctly that this bill encompasses all of the land in the areas between Lake Ontario and the Niagara Escarpment, not just the tender fruit areas outside of the urban areas?

**Ms Konyi:** For identifying the Niagara tender fruit and grape lands, follow the land use designations in the region of the Niagara official plan because that is the only area we found that actually drew a line showing where the lands were. So it doesn't cover the entirety of the region of Niagara. There's a verbal description of those lands in the bill.

**Mr Hudak:** Yes, I apologize. I'm trying to understand that. It's outlined in schedule 1. To the clerk, do we do schedule 1 separately, or do we do schedule 1 as part of section 2 of the act? Section 2 references schedule 1. Do we go back to schedule 1 later on in clause-by-clause?

**Clerk of the Committee (Ms Tonia Grannum):** We'll do schedule 1 at the end.

**Mr Hudak:** OK. But in terms of voting for section 2, since it says, "A greenbelt study area is established consisting of the land described in schedule 1," I think



it's important for us to all understand why particular areas were picked out as part of the greenbelt study area and other were not.

Maybe I'm interpreting the numbers wrong from the UDI, whose source is the Greater Toronto Home Builders' Association. Is the community of Pickering part of the greenbelt study area? Or is part of Pickering part of the greenbelt study area? How is Pickering, for example—the entire community.

**Ms Konyi:** Yes it is because the entirety of the region of Durham is within the greenbelt study area. So we've named the upper-tier or single-tier municipalities. The only area is the Niagara tender fruit lands, where they're named based on the line as I described in the region of Niagara official plan.

**Mr Hudak:** OK. So those particular communities like Pickering, Richmond Hill, Vaughan and Oakville—Oakville because it's part of—

**Ms Konyi:** Because of Halton region.

**Mr Hudak:** Halton region. OK. So those are all covered by the upper-tier designation. I appreciate that.

In the peninsula then, the lands that are described, are those outlined in the regional plan for tender fruit production only?

1610

**Ms Konyi:** I believe so. There is a line in the official plan that delineates the Niagara tender fruit and grape lands.

**Mr Hudak:** OK. I'll have some better questions—I apologize—for schedule 1 later on.

**Ms Konyi:** I'd like to refer to schedule 1. It does list in there the specific municipalities within the Niagara region. It's paragraph 12. That would be "Those lands within the regional municipality of Niagara in the towns of Lincoln, Pelham, Thorold, Grimsby and Niagara Falls designated in the official plan of the regional municipality of Niagara as being good tender fruit areas or good grape areas."

**Mr Hudak:** OK. So if I'm part of the community of Lincoln, I'm in the rural area and my land is not designated as a good tender fruit or grape growing area, how would Bill 27, as currently before us, impact on my land?

**Ms Konyi:** If you're outside of that line, you would not be part of the proposed greenbelt study area.

**Mr Hudak:** Help me understand what "that line" refers to.

**Ms Konyi:** The only exceptions within those areas would be if they are part of the Niagara Escarpment plan, and that would be a subject of a future government motion if it were to pass. It would include those lands.

**Mr Hudak:** So if I have land in the community of Lincoln that is not described in the Niagara Escarpment plan today and is not designated as a tender fruit or grape growing area under the region's official plan, then my land would not be impacted by this particular bill?

**Ms Konyi:** Yes, that's correct.

**Mr Hudak:** OK, thanks. To staff, thank you for the clarifications.

To the original point, then, help me understand the time frame. It's a bit of a piecemeal approach, as I described. You have your greenbelt; then you have the minister's plan on the growth management strategy. When will we have a better understanding of the approach that that ministry is taking and its consistency with, or differences from, Bill 27's approach?

**Mrs Van Bommel:** I couldn't speak for the minister in terms of the time frame that he has. He's in the process of doing consultations. I can't speak to that at this point.

**Mr Hudak:** The government is taking two different approaches, as I mentioned. I think Ms Churley is trying to remedy that in her motion. The concern I have is the absence of the agricultural support or the transportation plan or the growth management strategy, to understand how the government is treating the other areas. It may very well be a legitimate approach for Bill 27, in combination with that, or it may have been a better strategy to look at the province holistically, as part of the growth management plan, as opposed to bringing down the greenbelt and then consulting after the fact. We heard from a number of deputants, and I think it was a fair point, that in response to the government's change of position on the Oak Ridges moraine, this bill was borne into the Legislature. I think they had to strengthen their relations with some of the environmental stakeholders and brought this bill forward, and then the consultation was later. I think we heard the expression that the cart was significantly ahead of the horse in this area.

I wish Minister Caplan every success with his growth management strategy. It seems like it's a much more comprehensive approach than Bill 27, which concerned us and other stakeholders. Therefore, while I appreciate where Ms Churley is going with her particular motion, I'm not convinced that's the best way to approach it. I think in a perfect world it would have been a much more holistic approach, as Minister Caplan seems to be bringing forward. So I think the government has not addressed Ms Churley's concerns yet. There's a bit of a wait-and-see mode. I'm not convinced that's the best way to approach this particular issue. Granted, I recognize the issue, but I would have preferred to see it addressed in a comprehensive fashion, or at least simultaneous to this bill.

So, Chair, with respect to Ms Churley's motion, my view is that I will not be supporting that.

**The Chair:** Thank you.

**Ms Churley:** Recorded vote.

**Mr Ernie Hardeman (Oxford):** Thank you very much, Mr Chairman. I apologize for not getting my hand up soon enough to speak to it. It's to the amendment, but it's the general need for the amendment and then the general purpose of the bill. As the staff just pointed out—and I was kind of intrigued by that—the area designated for greenbelt protection is in fact the area that's presently designated under the official plan for the area involved.

From what I understand, in the areas that we're trying to restrict development in order to put the moratorium—I don't know whether six months is the right length for



moratoriums. In order to stop further development, we needed a time out, so to speak, to look at where we're going with this development. My understanding is that nothing in this bill is going to take away the right of the property owners to do what they presently can do under the zoning bylaws, even in the greenbelt study area. Is that right?

**Ms Konyi:** I'm not sure I understand, Mr Hardeman. Can you explain that?

**Mr Hardeman:** You said that in the greenbelt legislation, the protected area for the moratorium is only that area that is presently covered to preserve our agriculture—the tender fruit land for agriculture is all you can do in that designated area today.

**Ms Konyi:** No, I don't think that's what I said. Let's back up. The moratorium is on any changes from rural and agricultural land to proposed urban uses. So anywhere within the greenbelt study area, with the exceptions of the Oak Ridges moraine and the Niagara Escarpment plan areas, as they stand right now, the moratorium would apply in those areas.

**Mr Hardeman:** If I was a property owner in the Niagara Peninsula or in any area that's presently part of the study area and designated agriculture, that's all I can do, and I can continue doing that under this legislation until—

**Ms Konyi:** Yes, if the owner was trying to propose an urban use on that land, right now, as the bill is written, it would not be allowed to occur, but that's the moratorium.

**Mr Hardeman:** Prior to this bill—this bill isn't passed yet—being passed, if I were to make an application to change use on that piece of property, would I not require an official plan amendment?

**Ms Konyi:** It depends on the municipality, the way the plan is written. In some municipalities, a lot of things are permitted as of right; other municipalities, you have to go through an official plan amendment process. So it does vary by the municipality and what they're trying to do.

**Mr Hardeman:** I guess my question is—you said that the land we're referring to is designated tender fruit land.

**Ms Konyi:** For that portion in the Niagara area, yes.

**Mr Hardeman:** Let's just refer to the Niagara one then. It's designated tender fruit land. So none of that land presently has the right to build a factory on it, unless they get an official plan amendment.

**Ms Konyi:** I'm not sure. I can't say definitively, because I'm not sure what's permitted under each municipality's official plan, but in general terms, I'd agree that that's probably the case.

**Mr Hardeman:** Are you suggesting that there may be some designated tender fruit land in the Niagara Peninsula that is also eligible to be zoned for industrial purposes?

**Ms Konyi:** It could be for fruit processing or something like that. I can't say for certain, but I don't know all the details of every official plan in the Niagara Peninsula.

**Mr Hardeman:** My understanding of municipal planning has always been that once you've designated for certain general overall uses—which is exactly what this bill is trying to do: put a hold on re-designating—you can then zone all the uses within that designated area for uses that fit the designation. If the official plan says it's agricultural preserve-protected, in fact, you cannot zone it for anything that isn't somehow related to agriculture.

**Ms Konyi:** Yes, that's my understanding.

**Mr Hardeman:** So I would think that that would also hold true in the tender fruit designation.

**Ms Konyi:** Yes, it probably does, but my point is, I don't know what's in every single official plan.

**Mr Hardeman:** My question then, really, is the purpose of the bill. The minister has, without legislation, the power to take away the right of municipalities to re-designate the official plan. Isn't that right?

**Ms Konyi:** Through which mechanism?

**Mr Hardeman:** The minister can, by the stroke of a pen, take away the municipality's right to approve official plan amendments.

1620

**Ms Konyi:** That the minister could remove their power to—

**Mr Hardeman:** To change the official plan.

**Ms Konyi:** Yes. I believe that provision's in the Planning Act. I don't think it has been used.

**Mr Hardeman:** If we're looking at a six-month moratorium, it seems rather redundant to spend four of those months in the legislative process to put a bill in place that could have been done with the stroke of a pen to do exactly the same thing for the people of the area. Just say, "There are to be no future official plan amendments for the next six months until we can figure out where we want to go with this." What's the—

**Ms Konyi:** Sorry, Mr Hardeman. Can you refer me to what section of the Planning Act you're speaking of? I'm trying to understand where you're—

**Mr Hardeman:** No, I'm just a politician, not a professional.

**Ms Konyi:** Are you speaking to the minister's zoning order powers?

**Mr Irvin Shachter:** I wonder, sir, if I could assist you. Are you speaking to the minister's zoning order authority under section 47 when you talk about how, with the stroke of a pen, the minister may make a zoning order that sets out the uses that may be permitted?

**Mr Hardeman:** No. My understanding is, and correct me if I'm wrong, that all municipalities derived the power of official plan amendments based on the minister giving them that power.

**Mr Shachter:** You're talking about the authority of the minister to request a council to make a change to an official plan?

**Mr Hardeman:** No.

**Ms Konyi:** Mr Hardeman, are you speaking to the power that the minister has to withdraw approval authority? Is that what you're speaking to?

**Mr Hardeman:** Yes.



**Ms Konyi:** OK.

**Mr Hardeman:** They do have that power?

**Ms Konyi:** Yes, he does.

**Mr Hardeman:** That's what I thought. I guess it really comes down to, why are we not using that power here as opposed to this bill—again going back the Oak Ridges moraine fiasco, shall we say, if we wanted greenbelt legislation as opposed to dealing with the issue at hand?

**Mr Shachter:** With respect to the ability to take away the approval authority, one has to remember in response that there's still that process. The process still exists if somebody makes an application and a person still has a right to appeal the Ontario Municipal Board. You still have all these processes that are in place, notwithstanding that the minister may have taken away that approval authority.

What the bill, as proposed, contemplates is dealing with it in, if I can say, a broader context in terms of dealing with saying no person can make the application, no municipality can enact a zoning bylaw or pass an official plan amendment, and the board would not be able to deal with those matters. It's a little bit broader than just the minister taking away approval authority.

**Mr Hardeman:** Am I to understand then that this bill has more to do with taking away process than with actually making things happen? Is this to restrict or to negate the need to have people be heard by the Ontario Municipal Board?

**Ms Konyi:** That can be a net effect. The idea was that, as Ms Van Bommel was saying, the moratorium is the timeout. It's to put a hold on applications that would contemplate any kind of an urban expansion for the set time frame and the bill, as written now, is set to sunset on December 16 of this year. The idea was that it would go out and consult on what permanent greenbelt protection would be and, after that, there would probably be something further coming forward from the government. But the idea right now is that the moratorium would allow the government the opportunity to consult on the longer-term greenbelt protection, the appropriate way to do that.

Right now, as you know, the minister has appointed the Greenbelt Task Force. They are still in the consultation process and they still have, I think, two more meetings to go, which are stakeholder workshops and public meetings, and then they will be reporting back to the government with their recommendations. They have a consultation document out for comment as well.

**Mr Shachter:** I wonder if I could assist, sir. In many ways, this is also parallel to the Oak Ridges Moraine Protection Act that was passed a number of years ago. It's a parallel type of situation.

**Mr Hardeman:** My concern here is the fact that we're passing legislation that is going to be completed and redundant almost at the same time it gets royal assent. It seems to me that, at least the applications I'm thinking of—if the applicants decided just prior to this bill being introduced, if that was when they decided to

make application to have an official plan amendment to change the designation of the tender fruit land. If we look at the average application in the Niagara Peninsula today, you would be hard pressed to find an application for an official plan amendment that is processed in less than eight months. So I guess we must be talking about applications that were already in process and that someone was nearing the end of the process and we want to make sure this legislation stops it dead in its tracks.

**Mrs Van Bommel:** Actually, we have an amendment further on that is going to address that very issue, because that really wasn't the intent—if the application was well on in the process, an amendment will address that later.

**Mr Hardeman:** So applications that are well on their way are going to be allowed to proceed during the moratorium?

**Mrs Van Bommel:** In some cases, yes.

**Mr Hardeman:** If the amendment is passed?

**Mrs Van Bommel:** Yes, but that's a future motion. That discussion is to come yet.

**Mr Hardeman:** Then I'm having even more trouble trying to figure out why we're here. I suppose one argument can be made that we've come this far, we've wasted this much time, so we might as well waste the rest and get it passed. If it's just being put in place to slow down the zoning or the redesignation in the official plan process so a task force can have a look at what needs to be done, it seems to me a letter to municipalities saying, "We're doing this task force, we're looking at what we need to do to protect our—so those applications that have not yet been made, make sure you notify the applicants that it will be at least six months before it will be passed."

In fact, every official plan amendment—the Ministry of Municipal Affairs and Housing will be notified that this application is taking place, and past experience tells me it's very seldom that they would reply in less than six months. So they wouldn't even have to write the letter; it would take that long to get the information back. I guess the reason for this is the concern that there's something else here other than what I'm told there is, which is just, "Put a moratorium on things for six months so we can have a look at where we're going with the greenbelt."

The concern from the agriculture point of view is that it's only agricultural land that's being looked at and the only thing that they're looking at is whether to leave them with the same rights they have now or to take some away from them. There's some concern that if it was to protect agriculture, this piece of legislation would have been called the farm belt legislation instead of the greenbelt legislation. We're not looking at a lot of protected area presently; we're looking at a lot of farmland. Ideally, the end result should be that we're going to protect all that for agriculture. Why wouldn't it be called the farm belt instead of the greenbelt? The population needs the greenbelt and we're protecting it for society as a park or a preserve-type area.

**Mrs Van Bommel:** This is intended to deal with agriculture but also environmentally sensitive areas as



well. It isn't just a farmbelt that we're talking about. We're talking about environmentally sensitive areas as well.

We're trying to deal with the issue of urban sprawl. We're trying to deal with the issue of the creeping of development outside of urban boundaries.

**Mr Hudak:** To the parliamentary assistant's last point, you talk about the government's war on urban sprawl and the creeping development outside of the urban boundaries. As members well know, there is a sister bill that was brought in at approximately the same time, Bill 26, changes to the Planning Act, which, if I recall, has a very strong provision to address that very issue in terms of allowing amendments to official plans to go outside of the urban boundaries.

My recollection was that if a municipality had decided not to expand their urban boundaries for a particular project, that would no longer be appealable to the OMB, if Bill 26 were to pass. Is that right?

1630

**Mrs Van Bommel:** That's true, yes.

**Mr Hudak:** To Mr Hardeman's point, which is a good one, I think we've established that there's a political purpose behind the bill. If you're suggesting that the purpose of Bill 27 is to limit urban sprawl and not allow growth outside of the existing urban boundaries unless the municipality decided that that was appropriated under Bill 26, you could not expand. If Bill 26 passes, and I think you just said I was right, then unless the municipality voted in favour of expanding their urban boundaries, then that issue is addressed. There would no longer be this concern for urban sprawl. So maybe the parliamentary assistant can let me know why the provisions in Bill 26 are not sufficient enough.

**Mrs Van Bommel:** I think at this point we're talking about Bill 27. Bill 26 does address some of those issues, but there are a lot of other things in Bill 26, including the provincial policy statement and the Ontario Municipal Board. This one is dealing specifically with the greenbelt area.

**Mr Hudak:** I understand, but Bill 26 has been before the House. I had a chance to speak on it and express the concerns that I have with respect to Bill 26 and appropriate balance. If Bill 26 passes—and granted, you have the votes on your side of the House and I think you also have the support of the third party on Bill 26—it has some very strong powers.

I think there's an area of intersection. If Bill 27, as described, is to limit urban sprawl, Bill 26 goes a heck of a long way for you, if not the distance. It does leave it in the municipalities' ambit. Municipalities would decide, if Bill 26 were to pass, whether an expansion of urban boundaries is appropriate or not, as was said earlier. You could not appeal a municipality's denial, to the OMB, of an urban boundary expansion request.

You also have very strict language in Bill 26, as you had just mentioned yourself, with respect to making sure municipalities' decisions "are consistent with," as opposed to "have regard to," the provincial policy state-

ments. You're now moving forward. You've had consultations going on. You're moving forward with the PPS.

Again I ask, if Bill 27 has as its main goal containing urban sprawl within the greenbelt area, Bill 26 does just that, I guess with the notable exception that municipalities could expand their urban growth area. Is it that you don't trust municipalities to make the right decisions with respect to urban growth areas? Is that why you need the additional powers within the greenbelt area?

**The Chair:** At this point in time we're just discussing Bill 27, not Bill 26.

**Mr Hudak:** Agreed. Chair, I appreciate your point, but they are sister bills, so to speak.

**The Chair:** Still, we're dealing with Bill 27 now.

**Mr Hudak:** Fair enough. I guess I'm saying, given the existence of Bill 26, the powers in that bill, and to Mr Hardeman's points, why is Bill 27 necessary to constrain growth in the greenbelt when you already have a piece of Legislation before the House that gives municipalities effectively the tools to do just that?

**Mrs Van Bommel:** Bill 26 isn't in force at this point. We need to allow Bill 26 to be heard by the appropriate committee at the appropriate time. We're talking about Bill 27 here, which is asking for time out. It's a short-term sunset bill. I think at this point I really would feel that we need to move on.

**Mr Brad Duguid (Scarborough Centre):** We thank the member for his support of Bill 26.

**The Chair:** Mr Hardeman. Please, do you want to make sure that we are dealing with this amendment, NDP motion number 3.

**Mr Hardeman:** Exactly. Thank you very much, Mr Chairman. I think it's very important that we stick to the topic at hand, but I want to know what it is that this bill is trying to accomplish. I appreciate that the amendment is speaking more clearly to try and redefine or to clearly define what we're trying to do, but I'm still a little lost at what it is we're trying to do. Not that I want to talk about another bill in the Legislature, but I would just ask if in the opinion—and I suppose this would be to the staff. Presently, there was John Sewell's recommendation that "shall be consistent with" was in place instead of "shall have regard to" provincial policy statements when municipalities make their decision. If that was in place, could the province ensure that the municipalities adhered to the greenbelt protection without legislation? Could they do that through their regulations?

**Ms Konyi:** I think there are too many hypotheticals in there, in all honesty, Mr Hardeman, to answer that question. Bill 26 isn't in place at the moment.

**Mr Hardeman:** I recognize that. I wasn't even speaking to Bill 26; it was Bill 163 at the time when John Sewell recommended it. What I'm suggesting is, I'm still going—

**Ms Churley:** It was law.

**Mr Hardeman:** Yes, that's right.

**Ms Churley:** Under the NDP, it was law.

**Mr Hardeman:** It was the Planning Act. I spent quite a bit of time at committees, just as in this one, dealing with that one.



I really have a problem with having legislation for six months. There are a number of other opportunities for the minister to deal with this issue while we are putting in place the legislation that the minister wants in place for eternity or for whenever someone wants to change it again. It seems to me that can be done, if you have the regulation, by removing the right to have official plan amendments approved at the local level. It can be done by policy statements, and they must be consistent with them. If they approved an official plan amendment that was contrary to the provincial policy statement, it would be turned down. So you could protect the greenbelt with that. Isn't that—

**Mr Shachter:** I think in a perfect world, Mr Hardeman, one could say that it would be turned down. But remember, as has been indicated before, there is a process in place and proponents of developments do have the right, if they have been turned down, to go to the Ontario Municipal Board. On the other hand, the approval authority, if it's a municipality, may determine that it's an appropriate proposal and it may end up at the board because ratepayers may not like that development. I'm not necessarily prepared to agree with your assessment of what would be necessary in order to get where we are today.

If I could just hearken back to a comment made previously, this is parallel to the Oak Ridges Moraine Protection Act and, in that sense, is intended to be a short-term moratorium. It's not intended to affect—how can I put it?—I hesitate to say people's rights for a long time, but it's intended to be, as has been indicated, a time out, using this particular mechanism in order to determine what would be more appropriate for the future. As you may recollect, following the Oak Ridges Moraine Protection Act, 2001, there was the Oak Ridges Moraine Conservation Act. That did create the Oak Ridges moraine area as a result and the land use designation through the plan.

**Mr Hudak:** I appreciate the point from staff. I guess what Mr Hardeman and I are trying to get at is, you have a number of approaches going on for this particular issue. We talked about—

**Ms Churley:** On a point of order, Chair: I have to leave the room briefly. I'm hoping that you will delay voting on my amendment until I come back. Could I have agreement on that? I'll be five minutes.

**Mr Hudak:** We'll see what we can do. We'll try to accommodate.

**The Chair:** Five minutes. Sure.

**Mr Bob Delaney (Mississauga West):** Perhaps Mr Hudak could stretch his remarks to accommodate Ms Churley?

**Mr Hudak:** I do my best to help my colleagues on all sides of the floor. I'll try to stretch things out to enable Ms Churley to stand up for an important point that she brings forward.

There's a different reality today than in 2001 in terms that there are other government activities underway. As I talked about, Minister Caplan, through public infrastructure renewal, has his growth management strategy,

which I think is—it's not the entire province, but southern Ontario as the pressure point. I think the goal is a more holistic approach than Bill 27. Bill 26 covers some of the same areas, and the goal you're trying to achieve through Bill 27, which you described earlier as stopping the growth of urban sprawl, limiting growth outside of existing urban centres—at the same time, you have the provincial policy statements that have been moving forward under Minister Gerretsen, and I think as well Ontario Municipal Board reform. The minister spoke about this just a few days ago and is undergoing some consultations, I believe, on OMB reform. So in terms of the issue at hand that you say Bill 27 is trying to address, if Bill 26 were to pass—and I assume you introduced it with the full intention it would pass—you'll be getting municipalities to deny, I think with considerable strength, any applications outside of the urban area that they don't support. I think under that bill if a municipality did support the expansion of a boundary, they could do so, although the minister could declare a provincial interest in that. But I think for the most part municipalities will be able to deny these types of expansions.

1640

Secondly, I think your goal is to reform the OMB. I believe the government's view, and it certainly was their view in opposition—they would say the OMB was a sort of creature unto itself. The Liberals would basically say that they needed to constrain the OMB, and I think in the balance of things to bring forward greater municipal strength vis-à-vis the OMB. I'm characterizing the arguments I hear from across the floor from then-opposition; I think I'm hearing a similar set of themes from the government today.

So you have the OMB reform, you have Bill 26, and the third tool you have is the minister's zoning order—or orders; we found out that there were two orders the minister made that I think expire at the same time as the bill. I think December 18 is the goal. The MZOs expire—

**Ms Konyi:** There is no expiry date.

**Mr Hudak:** There is no expiry date. OK. I don't know if the minister expressed an intent for them to expire or not. Is it the minister's intent for those to expire after we find out what happens to Bill 27 at the final vote, third reading vote? The minister hasn't expressed any sentiment that the MZOs would continue infinitely.

**Ms Konyi:** It's my understanding that once the legislative moratorium is in place, there's no longer a need to have the minister's zoning order, because you'd have two things causing the same effect of the moratorium.

**Mr Hudak:** Right.

**Ms Konyi:** So there would be a need to revoke the minister's zoning order, but at this point in time there's—

**Mr Hudak:** Which seems to make sense. That's what my intuition was. Has the minister publicly said that that's his intent, that the MZOs would be eliminated or expired, or whatever the proper term is, at the time of legislation?

**Ms Konyi:** I'm sorry; I missed the first part.



**Mr Hudak:** What you just said makes a tremendous deal of sense: that they would expire in tandem with new legislation being voted on by the Legislature.

**Ms Konyi:** It's actually a legislative process that's involved in section 47 of the Planning Act, so it doesn't just automatically expire. There has to be notice.

**Mr Hudak:** Which seems intuitive, it seems reasonable, that that would be the case. I guess just a quick question, and maybe I should ask the minister for clarification: Has the minister expressed any intent as to when the MZOs would expire?

**Ms Konyi:** The only zoning order I was speaking of was the Golden Horseshoe minister's zoning order. There are other minister's zoning orders that cover areas that are within the greenbelt study area, and I can't speak to how long those orders would remain in place.

**Mr Hudak:** OK. The MZO with respect to the greenbelt study area: Has the minister expressed his intention as to when that MZO would expire or be taken off?

**Mrs Van Bommel:** I really couldn't tell you. I couldn't tell you whether he's publicly expressed such an intent at this point. You'd have to discuss that with the minister.

**Mr Hudak:** I appreciate that. It does seem sensible. I can understand why that would be consistent with the approach the minister has taken. It might be helpful to have that confirmed—

**Mrs Van Bommel:** We'll certainly address it with the minister.

**Mr Hudak:** —because it would be a bizarre situation if Bill 27 were to pass, and the MZO considered, it seems like it would be a redundancy, or even worse than a redundancy potentially, I guess, depending on what the final version of Bill 27 looks like.

But back to my central point, if you have a set of tools already in place—the provisions in Bill 26 as were discussed, if they do pass, and I appreciate you can't assume they've passed. But if you have the tools in Bill 26 and you have the MZO, if the government is moving forward with the MOB reform, along the same themes that were brought forward by the then opposition, now governing, party, if you have those tools coming forward, along with Minister Caplan's review, to Mr Hardeman's point, why is Bill 27 necessary, when you'll have a set of tools already in hand that basically do the same thing as Bill 27?

**Mrs Van Bommel:** I think you are presuming something about Bill 26 that's inappropriate at this stage.

**Mr Hudak:** But you haven't brought forward Bill 28, that's the same as 27 and 26 in case they don't pass. I'm not trying to be facetious here, but if I've followed debate correctly, you have government members—I have not heard anybody speak out against Bill 26—

**The Chair:** We are debating Bill 27. Don't refer to Bill 26, please.

**Mr Hudak:** OK, Chair, I appreciate that. I'm trying to understand what the government is trying to achieve through Bill 27. It was described a few moments ago as limiting urban sprawl. My point is that, through other government initiatives, they are going to have a set of

pretty strong tools to achieve just that at the municipal level. So why do you need what appears to be the redundancy, then, of Bill 27, when you already have a number of other tools at hand?

**Mrs Van Bommel:** I think again we're presuming something at this stage. You're presuming the passage of 26.

**Mr Hudak:** OK.

**Ms Churley:** I know it's not my responsibility, but I'm going to answer that question in the interest of moving on. The reason why I support this bill and want to expand it is because of the urban sprawl that's happening, notwithstanding all of the laws out there and the dysfunctionality of the OMB and the ability for all kinds of development to take place, even within the existing Planning Act, the new one the government is bringing in. But with the OMB the way it is and the situation that we have, we are in a very dire situation in terms of urban sprawl. This is an attempt—a weak attempt, in my view, without these amendments—to put a hold on this so we can do proper planning.

I would say to the members that in terms of my amendments specifically, I would contend that they're out of order now because it's getting way off. My amendment is very specific in terms of expanding this legislation to make it even stronger than it is.

**Mr Hudak:** If I could just quickly respond to Ms Churley's point, I appreciate the point you're making. You're trying to address—

**Ms Churley:** If I may just say, that's why you guys, the Tories, had to bring in special Oak Ridges moraine legislation, and we still have many of the same problems notwithstanding this government's changes to some of the Planning Act. It's still a problem that needs to be curtailed.

**Mr Hudak:** I appreciate the point and I appreciate what you're trying to do through your proposed motion. I guess the point that I'm trying to drive is that the government has a number of other tools at their disposal to hit the policy goal that they've brought forward.

**The Chair:** Would you please stick to this amendment.

**Mr Hudak:** I think I am, Chair.

**The Chair:** You're going away at the present time.

**Mr Hudak:** Let me speak to subsection (2) of the amendment. It's called "Purpose of study area": "The purpose of establishing a greenbelt study area is to ensure that the land in that area forms the basis for developing a larger, connected network of protected areas across the province of which the greenbelt area will form a part." Then subsection (3) goes on to talk about the areas that are juxtaposed to the areas that are outlined in schedule 1 of the act.

The debate began with, how are you going to remedy this situation? Mr Hardeman made the point that, is Bill 27—not only this section, and even this section, as amended, proposed by Ms Churley—actually a necessary approach at all, given the other range of instruments that the government has at hand? I would expect, as a principle, that bringing legislation into the House would be



one of the last resorts if you already have sufficient tools at hand.

1650

I guess the counter-argument would be that this is a stronger tool and that the tools the government already has in its tool kit, so to speak, are not sufficient. Maybe you could help me understand, if that's the case you're making, that the current set of tools is not sufficient and therefore we need Bill 27. Is that what the government is saying, or is the issue that you don't trust municipalities to make the right decision with respect to their urban boundaries? That is probably the difference between 26 and 27. Maybe I'm wrong, but I think it's an important point. You're giving municipalities the ability to control their urban boundaries through other tools. Is it that you don't think they'll do an appropriate job in the greenbelt area? How is Bill 27 not redundant considering the other tools the government has at hand?

**Mrs Van Bommel:** I think we're really just talking about a philosophical difference in approach to how to bring about the same thing. I think, as a government, we're very comfortable in doing it this way. As Mr Hardeman has stated, we could have used other tools, but we feel this is more appropriate to what we want to do because we do trust the municipalities.

**Mr Hudak:** I appreciate what you said about philosophy, but as I said, you have a pair of approaches: You have Minister Caplan's approach and you have Bill 27, which is specific to a geographical area outlined in schedule 1.

Ms Churley makes the point—and I think the point is appropriate and is a good point—that those pressures now have just moved into other areas. It seems to me you have a set of tools that you're going to be using in those other areas but you're creating a new tool to use in the greenbelt area. I don't fully understand how those tools achieve a different purpose, which seems to be containing urban sprawl. Maybe this is not a principle, but I would think legislation is a last resort. If you already have sufficient tools to reach a policy goal, why would you need additional legislation?

Maybe I'll ask that question as clearly as possible. I appreciate your point that you do trust municipalities, that you think they can make the right decisions with respect to their urban boundaries. What is different about this legislation—Bill 27—and the tool you're trying to develop in the geography and the tools you already have in place or will have in place shortly?

**The Chair:** We'll now proceed with the vote. It's a recorded vote on NDP motion number 3.

**Ayes**

Churley.

**Nays**

Arthurs, Delaney, Dhillon, Duguid, Parsons, Van Bommel.

**The Chair:** The motion is defeated.

We'll move on to motion number 3.1. It's a PC motion.

**Mr Hudak:** I move that section 2 of the bill be amended by adding the following subsection:

"(2.1) The establishment of the greenbelt study area does not in any way prohibit or interfere with the planning, design, approval process or construction of:

"(a) the Mid-Peninsula Corridor;

"(b) a new racing facility at Mohawk raceways."

**The Chair:** Comments or clarification?

**Mr Hudak:** I think one of the concerns we heard was that there were a number of projects—and this amendment mentions two in particular—that were well underway, that had received a great deal of local support and have now been sidelined, so to speak, by Bill 27; and a concern from proponents of these two causes that if Bill 27 were to pass, they'd have no capability not only up until December 18 to move forward but they felt these projects would be jeopardized completely.

I'm not sure if you heard much about the mid-peninsula corridor in the Peel region hearings. I think the government has talked about the Niagara-GTA gateway, maybe a new title for the exact same thing. We heard from a number of groups in Niagara that spoke to the importance of the mid-peninsula corridor who I believe would feel quite strongly that it should be protected under Bill 27 so that it can move forward and be enshrined in legislation.

Let me give you some of the particular arguments for that highway. First there's growing pressure on the existing highway into the GTA, the Queen Elizabeth Way. The feeling is, and to Ms Churley's last amendment, if the leapfrog approach is happening, that's going to build even more pressure on our existing highways.

Despite the faith the members may have that intensification efforts in the big cities are going to address all of the new housing demand—whether it's for new jobs, new people moving into the province of Ontario—my feeling, and I think the feeling of a number of delegations, was that that growth is still going to continue outside the greenbelt area. There will still be a demand on housing, work projects and certainly with respect to international trade.

The Niagara crossing is second only to the Windsor crossings, in all of Canada, for the value of trade that comes across that border. I think I'm accurate. It's easy to throw out statistics but they're probably close. There are just as many jobs in Ontario that depend on trade out of our province, as they do with the other provinces. So I think it's absolutely important to relieve congestion, for people living on the fringes of the greenbelt or in the greenbelt area, as they use the QEW, and important to help get goods, tourists and those who work in the GTA to market and home safely, as quickly as possible.

Another important point with respect to the mid-peninsula corridor, a new highway that would go through the Niagara Peninsula: The swath started generally in southern and eastern Niagara, around the Stevensville area on the QEW, and then cut a path west and north,



eventually linking up with three potential areas—the 403, the 407 and the QEW, or the 401. I think Highway 6 is also a suggested link. The important point of the mid-peninsula corridor happening in southern Niagara, particularly between Port Colborne and Welland, is that obviously it's going to help create jobs in that area.

If you open up this artery for investment and in trade and travel, I think it's obvious that new jobs will result in those communities. Some of those communities, when they're off the existing highway, the QEW, have not benefited from the same degree of job growth as those that are on the northern part of the peninsula or on the QEW, whether it's Lincoln, Grimsby, St Catharines, Niagara Falls or even Niagara-on-the-Lake. So from an economic standpoint the highway is an important one.

But with respect to Bill 27—

**The Chair:** You're getting away from the motion. Please stay with the amendment, otherwise I will put you out of order.

**Mr Hudak:** Certainly, Chair. I am talking about clause (2.1)(a), the Mid-Peninsula Corridor, of the amendment. So I think it's the exact topic that I'm speaking to.

Second, you probably recall that we heard very consistently—no, there is one exception. PALS, the Preservation of Agricultural Lands Society of Niagara—I think that's the appropriate acronym—did speak against the highway, but the other delegations that spoke in favour of the highway spoke about its importance in support of Bill 27. The basic premise was that if you want to take development pressure off the tender fruit land, described in schedule 1, in the regional municipality of Niagara and the towns of Lincoln, Pelham, Thorold, Grimsby and Niagara Falls—so parts of Niagara in the north, central and eastern portions of the peninsula—then it makes a tremendous deal of sense to invest in a new highway to do so. In fact, the previous Minister of Transportation, Brad Clark, had talked about the new mid-peninsula corridor as being an environmental solution.

1700

I would think that the members also addressed it in the sense of the urban sprawl that this bill purports to get at by moving residential, commercial and industrial development away from the sensitive lands described in the bill or the tender fruit and grape area to south and west Niagara. So it seems to be consistent with the goals of this legislation and is supportive of the government's goals and also supportive of the economic and social goals of the regional municipality of Niagara, which unfortunately did not have an opportunity—they were called away so they missed their chance to present at the committee.

There were other delegations that spoke to this. The Wine Council of Ontario, for example, in their presentation to this committee from Linda Franklin, said, "In the Niagara region, there's a logical and appropriate direction for further urbanization: to the south. Those communities are not home to the exceptional micro-

climates or unique soil conditions" of the land below the escarpment.

They have been very strong proponents of the mid-peninsula corridor and, I expect, would like to see it either in this bill, or another guarantee by the government that it's proceeding at pace to support the goals of this legislation.

Linda Franklin went on to make the point that I support, that in order to facilitate this expansion, construction of "the mid-peninsula corridor must proceed as a critical component of the Niagara land preserve."

The reason why it's particularly timely and important to include in Bill 27 is because, regrettably, we have not seen movement by the government to date on this. If Minister Takhar had said, "We're committed and it's moving forward. Here are the terms of reference. It's a go. It will be an expedited process," you probably wouldn't hear groups coming before the general government committee talking about the importance of the mid-peninsula corridor. But, regrettably, in a series of questions in the Legislature, Minister Takhar, while he has generally acquiesced to the notion that they need the highway in the peninsula, has shied away from being specific on whether it's through the south or the west. Granted, maybe the minister doesn't want to make that commitment, but if the Ministry of Transportation was working hand in hand with municipal affairs on the greenbelt strategy, it seems to me elementary that the push would be away from the tender fruit lands toward the south and the west.

Unfortunately, Minister Takhar so far, while giving a bit of lip service to the importance of highway development, has not moved this project forward an inch. In fact, you can make the argument that the brakes have been slammed on this project. If they had moved forward, the terms of reference would probably not necessitate this amendment, (2.1)(a), to the mid-peninsula corridor. However, I think they have been put on the shelf and the minister has indicated basically—I'm paraphrasing; I'm not giving an exact quote—that they needed to go back to square one on this bill and this road and study the need for a mid-peninsula corridor in the first place.

I've got to say that I think a very strong need has been brought forward by Bill 27. If the government's goal is to regulate land use to combat urban sprawl and, as part of that, the tender fruit land in Niagara, it seems this highway should go forward part and parcel with Bill 27 and therefore have a place within the bill. I know there are no other highway references and I know the concern I'll probably hear from across the floor, but I do think—and maybe they can give some assurance to me—that the highway is part of the greater government plan to help take pressure off the tender fruit land in the north and west of Niagara. Therefore it will either agree to this amendment or, maybe in other parts of the bill, will note the importance of the mid-peninsula corridor, or hand in hand, putting it in the bill, as well as a preamble that we'll be addressing a bit later on.

I need to make the argument strongly that this new highway would be a very important tool; otherwise, as



the Wine Council of Ontario said, the pressure to develop along the Queen Elizabeth Way will become irresistible. You said there's a time out. That pressure is going to continue even after December 18, so the government will be left with a couple of choices: either a permanent piece of legislation much like Bill 27 before us or perhaps a stronger piece of legislation, the scope it looks at, like Ms Churley's last amendment. But I've got to tell you that you could have no better tool to address the goals of Bill 27, and that's why it's important, I think, as well, in section 2 about the greenbelt study area, to develop the mid-peninsula corridor back on its original schedule.

I did ask the minister, through order paper questions, about his plans. The indication was that perhaps sometime in the fall they would be moving forward with the terms of reference for the highway. Effectively, that has resulted in at least a one-year delay, if not more, depending on if the minister revisits some of the studies, like the needs assessment study for the highway, in which case we'd be looking at several years' delay, meaning that the highway may not take place for probably 10, 12 years down the road. After that, no matter what Bill 27 finally looks like when it gets through the legislative process, that's pretty late to have an impact on the tender fruit land. Granted, you can't build a highway overnight, but if we could expedite this process by including the mid-peninsula corridor as part of Bill 27, you'd go a long way to assuaging the concerns of not only myself as the MPP and those constituents who have brought forward this issue to me quite regularly since Bill 27 was introduced, but the Wine Council of Ontario.

I'm quite sure, too, that the Grape Growers of Ontario, whether it was in their presentation or not—they did theirs at the same time as the tender fruit presentation. But I am confident I have heard quite often from the Grape Growers of Ontario that they support the mid-peninsula corridor. Certainly, as we have heard, and the parliamentary assistant has mentioned, farmers are under pressure. They face an option of selling to the private sector for development. The more profitable the farmers can be—if we save the farmer, we can save the farmland—the more likely they are going to stay in production.

The other side of the coin is that if you can relieve some of the pressure, if you effectively lower the opportunity costs of keeping the land in agricultural production, you're going to have less land that will be lost to development. Right? You mentioned earlier that one of the main reasons behind Bill 27 was to address the pressure on the greenbelt area, that that pressure was there and we needed to address it to make sure that land wasn't lost forever. One tool—and you have talked about that in the Legislature, whether it was the parliamentary assistant or other members—you've talked about for relieving pressure is brownfield development. You've talked about intensification in the cities, so that this demand from citizens in Ontario or new citizens in Ontario to find housing in the GTA, the best job market probably in the entire country over time—you could do

so through brownfields or intensification efforts. Granted, those are the two tools you've spoken about.

I'm suggesting, through this amendment to section 2, to put forward another tool that will address specifically—and I think it'll help in other areas of the greenbelt; Halton region is one, as well—the leapfrog concerns that Ms Churley has by agreeing to this amendment to the bill. The mid-peninsula corridor will take that pressure out of those areas to an extent, but will be dramatic in relieving some of the pressure that tender fruit farmers and grape growers face currently in the Niagara Peninsula. So your bill needs to address that. You need to address that through schedule 1 of the bill.

I'm suggesting another tool to help address that and, I would say, hopefully relieve some of the more egregious parts of the bill that stakeholders and constituents have had concern about.

The Grape Growers of Ontario, in their report to the Greenbelt Task Force—and I think this was submitted to us as well—addressed a number of issues with Bill 27, including the mid-peninsula corridor. They reference the good work that was done by the various agricultural commodity groups in the Niagara Peninsula called *Securing a Legacy for Niagara's Agricultural Land: A Vision with One Voice*.

**The Chair:** Mr Hudak, we're getting away again, and this is the last warning. If you are getting away from the amendment, I'm going to move on to another member.

**Mr Hudak:** Chair, I appreciate your point. I do believe I am speaking quite consistently and building a case why clause 2(2.1)(a) should be a necessary amendment to this bill, because the mid-peninsula corridor addresses the goals, as I understand them, of the government, and they're admirable. They're admirable goals, no doubt. They're enviable goals: protecting tender fruit land; helping maintain our grape growing area. Sadly, while there are some areas in other parts of the province, nothing of the geographical extent that we have in the peninsula, and I would argue our products can certainly hold their own and more with British Columbia.

**1710**

So I respect the goals of Bill 27, in terms of protecting the tender fruit land and the grape growing area. I'm not convinced this is the best method, and Minister Hardeman—sorry, Mr Hardeman; it's hard not to say minister still—and I am certainly very concerned. I think the parliamentary assistant is as well, and working within government circles to ensure there is an agricultural plan to support our farmers in the greenbelt, because we are limiting their options.

I think the point the Grape Growers of Ontario make about Bill 27 as a whole, in terms of supporting the land, and when you get into section 2, establishing the greenbelt study area, how the mid-peninsula corridor impacts a significant portion of the greenbelt study area—I would think they would support quite strongly, as does the wine council, having this highway move ahead to take away that pressure. Now, whatever tool you use—if you put it in the bill, if you vote for my amendment—fantastic—or



if there is a commitment from the Minister of Transportation, Minister Takhar, to move forward—I think that will satisfy a significant concern we heard in these hearings.

The Grape Growers of Ontario report on page 2 references the mid-peninsula corridor. The point they make says that building a transportation corridor south of Niagara, as I mentioned—and some of the communities that would benefit from that are Fort Erie, Welland, Port Colborne, West Lincoln and even Dunnville in neighbouring Haldimand county is a very strong supporter of this. I would argue that many of the areas—Pelham, Lincoln, Grimsby, even Niagara-on-the-Lake and St Catharines—that are impacted significantly by Bill 27—I bet you dollars for doughnuts that if you asked the municipalities for a resolution in favour of the mid-peninsula corridor, the municipalities that I mentioned would strongly favour it. I know this is not likely feasible, in the interests of time, but if you asked them if they supported my amendment, I think there's a pretty good chance they would think if the Minister of Transportation is not committing to it, maybe the parliamentary assistant and her colleagues will support this amendment to the bill and help move this bill forward.

The grape growers make the point that building a transportation corridor south of Niagara—and the southern part of Niagara, I think, is the point—will help to protect the tender fruit and grape lands in Niagara. They make a very valid point that the Queen Elizabeth Way, with its increases in volume that we have seen—a significant increase; I know the 401, of course, and other major highways as well—is negatively impacting Niagara's agricultural lands. That's not only the most direct effect in terms of road salt and some of that on the land directly next to the highway. That's one issue. Those landowners have a significant concern and would probably like to see that addressed through the bill, as well. But because you've seen such significant traffic, whether it's trade or tourism, as a result, you're seeing pressure on the agricultural lands. Obviously some industries want to be close to the major highway, and as such, put pressure on the local municipalities to zone the projects there appropriately or to do some kind of industrial development—

**Ms Churley:** On a point of order, Mr Chair: I'm just wondering if there are rules in this committee about how long each party gets to speak.

**The Chair:** Twenty minutes at a time. If there is anybody else who comes in to—

**Ms Churley:** So, one can go on indefinitely on this.

**The Chair:** That is right, until somebody interjects; but I would look at the ruling also.

**Ms Churley:** I do want to interject briefly before my name is taken in vain too many times, before readers can see that in fact I don't support Mr Hudak's contention that his amendment is supportive of my amendment trying to expand the greenbelt. I say that, in fact, when we get to it, I have an amendment coming up that does just the opposite, for obvious reasons. I just want to make

sure that this in Hansard so people can see that I think it's nuts, it's absolutely crazy, to allow proposed highways to continue to be on the books during the greenbelt, period, when there is a freeze on.

I want to make it quite clear that it's an urban myth, and I'll be talking about this later, that if you build a highway it will actually take the congestion—although it might for a while—from one highway to another. But we all know from international studies that what happens when you build highways is that they will come. It encourages more development, more traffic on that particular new highway.

Although I understand the concern in the area, I just want to make it clear to Mr Hudak and others that I do not support his amendment and his contention that it's actually complementary to mine. It indeed isn't.

I have to admit that I'm not making a huge, big deal of the highways, although I'm not happy about it being left. There are several: There's the extension of Highway 407 to Highway 35/115 and the extension of Highway 404 around the east and south sides of Lake Simcoe. Then there's the northward and eastward extension of Highway 427 to Barrie, and the new mid-peninsula highway we're talking about, the creation of a new east-west GTA transportation corridor, and the extension of Highway 410 northward at least to Highway 89. I think it's wrong and a problem that these are still being allowed right in the middle of the greenbelt area.

It's my understanding, and I would ask the parliamentary assistant if she has an answer to this—given the, shall we say, deficit and some of the cuts that are happening across most of the ministries, would it be fair to say that, for those of us who have concerns about highways, we will not see any new highways being built, even the beginning of construction, for a very long time? Would that be fair to say, and that I don't need to worry too much at this time about new highways?

**Mrs Van Bommel:** I really can't speak at all on those issues. We're talking about issues that involve the Ministry of Public Infrastructure Renewal and the Ministry of Transportation. I have no authority or reason to speak on their behalves.

**Ms Churley:** Do you support allowing new construction of highways to go ahead within the greenbelt area?

**Mrs Van Bommel:** Again, we need to look at those things within the context of the ministries that are appropriate to them.

**Ms Churley:** Can I ask you and perhaps staff, because there's no staff here from the Ministry of Transportation—is there? I have a feeling we're going to be back again after today.

**Mr Hardeman:** What was your first clue?

**Ms Churley:** I would like somebody from the Ministry of Transportation to be available for our next clause-by-clause. I do have an amendment coming up soon that deals with the construction of new highways in the greenbelt area and I would like somebody who is knowledgeable about the government's timetable on these highways to be available to discuss that issue.



**The Chair:** Definitely, we could ask for that, but I don't think this bill is for that. It's just a moratorium until December 18.

**Ms Churley:** But I have an amendment on the need to include it. Let me put it this way: There are proposals to build highways right in the middle—in the heart, in some cases—of the greenbelt area that has been designated. So I think it's critical that we be able to get more information about the proposed highway development.

**The Chair:** There could be some proposals at the present time but the purpose of this bill is not to look at what is going to happen at the present time. We want a moratorium and that's what it is until the study is completed.

**Ms Churley:** But my point, Mr Chair, if may, is that there isn't a moratorium on the highways which cut right through the greenbelt area. That's the whole point of why I have an amendment. I think that's a problem.

**The Chair:** Is there any MTO staff here? No.

**Ms Churley:** All I'm asking is that when we get to our amendment next time, because the amendment has been ruled in order, that I have somebody who can respond to any questions that may come up in response to my amendment.

1720

**The Chair:** Is anyone from the Ministry of Municipal Affairs ready to answer that question?

**Ms Konyi:** I can't speak to the timing of provincial highway initiatives.

**Ms Churley:** OK. If I could request that, please, because my amendment, which is in order, will be coming up. I thought it might—

**The Chair:** Ms Churley, it could be part of the design when we're talking about this motion that we're debating at the present time. This is what you referred to when we talked—because we're now away from this motion.

**Ms Churley:** No, because I'm responding specifically to Mr Hudak's Conservative amendment, which talks specifically about one of the highways. Mr Hudak was specifically referring to one of my amendments and saying that his vision on a highway supported my vision, which it doesn't. So it's all interconnected. Highways are a very big part of the issues we're talking about here on urban sprawl. So if I could request that for the discussion of my amendment, which is quite specific to highways—

**The Chair:** We could ask.

**Ms Churley:** OK. Thank you. That's all I need.

**The Chair:** Any other comments?

**Mr Hardeman:** Speaking directly to the amendment—and I think Ms Churley's comments about constructing or not constructing new highways or new facilities or other infrastructure in the greenbelt area is rather an important item to have some discussion on.

As we go back to the previous amendment when we were talking about the status quo being able to remain in all the areas of the greenbelt area, this really is a moratorium on future changes, where it's going in the future. But agriculture in the greenbelt area can carry on just the way they are now. We're not looking to change the uses.

We're also not looking to change the present industrial uses or residential uses that are in the greenbelt area. It's a moratorium on further changes.

This amendment seeks to do the same thing, only to make sure that's included, the process of the mid-peninsula corridor and a new racing facility at Mohawk Raceway. They are already allowed uses in the area. Obviously, for the corridor, the province doesn't require rezoning of the property. It just requires environmental approvals. This doesn't say this should be built without those approvals. It doesn't say it should be built without any shortcuts. It just says that, because of this moratorium, we should not be putting a freeze on further development for that.

I think it's been expressed by the public generally for some time now that this transportation link and this infrastructure are needed in the area, and from a principle point of view, there's been very little reluctance to accept that further transportation links need to be put in place. I think the study that's being done during the moratorium by the task force on the greenbelt area will definitely be looking at future growth in the area and what type of infrastructure would be needed to facilitate that. But I think the mid-peninsula corridor has been looked at for some time, based on the development as we have it today and as we're looking to the future. So it's not to say that at the end of the study more protection couldn't be put in place and that the development that was envisioned is not going to be as extensive as it was five years ago, when we were projecting 10 years into the future.

But that's not to say that transportation and infrastructure do not need to be put in place any more. If the projections that the ministry and government were putting forward 10 years ago as to where we were going in the peninsula over the next 10 years were accurate, then in order to be able to arrive at that destination with sufficient infrastructure in place, we need to keep the process ongoing for that infrastructure for the corridor.

I think we want to make sure it's understood that farmers can keep farming and governments can keep proceeding with trying to provide the infrastructure needed for the future needs of the community, so we don't have a situation where we've decided what type of development and amount of development that's going to take place in this corridor and then find out, yes, but that highway we were planning is now another six months or a year behind because we put a stop to everything while this process was ongoing. I think it's kind of an assurance that the process for the corridor will stay on time and on budget.

**The Chair:** So your question, Mr Hardeman, would be to the ministry. Will a farmer be able to keep farming? With a highway that has already been designed, can they continue the designing of the highway as it was—

**Mr Hardeman:** No, Mr Chairman. We've got the commitment from the parliamentary assistant that, in fact, agriculture is going to be able to continue farming while this is going on. We're not changing anything that's presently on the ground and is being allowed.



I need some assurances that the planning for the mid-peninsula corridor fits in that same category. Can the government keep on—and this really is just to establish that it does in no way prohibit or interfere with the planning, design, approval process or construction of—well, I think it's reasonable that we're not going to be constructing it in the next six months, but it's also not reasonable to say that for the next six months no further planning can take place because there's a prohibition on planning. So you could do no more designing. I think the corridor is a long way along in the process of design, so I think that needs to keep going on. So this is just an assurance that that's going to happen.

Personally I don't know about the new racing facility at the Mohawk Raceway, but I expect that it must be in the planning processes too. So, again, they need some assurances that this doesn't prohibit them and put a six-month delay in place for them because we're trying to decide what should be happening to the tender fruit land in the rest of the peninsula.

I think it's a real supportive amendment, just to clarify, both for the government and for the new racing facility at the Mohawk Raceway, as to what needs to be done to make sure they can accomplish what they've been planning to do for the last 10 years.

**The Chair:** So you're questioning that at the present time?

**Mr Hardeman:** No; as you wanted, Mr Chairman, I'm supporting the amendment to the letter.

**The Chair:** Thank you. Mr Hudak.

**Mr Hudak:** I thank Mr Hardeman for his support of arguments in favour of the motion before us to amend section 2 of the act, particularly clause (2.1)(a).

I stepped outside for a moment. I came back and Mr Hardeman was talking about the important impact of this bill on agriculture and what we're concerned is a very restrictive ability, or maybe a not-well-thought-out plan in terms of the potential restrictions this has on farmers on keeping their farmland in production. I think the mid-peninsula corridor, as part of this amendment, would help tremendously in ways that I've described and other stakeholders are describing.

One item that came forward that I think fits in with Mr Hardeman's point—and I think the need for amendments to the bill that we've brought forward—comes from the minister's own consultation committee that's currently out there doing consultations on this bill. They brought forward an interim report. In the interim report, they suggested that the minister set up an agricultural task force to help address some of these issues. I think that's an outstanding idea. I think Mr Hardeman supports that notion as well. In fact, I had the opportunity to bring that up in the Legislature in question period a couple of weeks ago. The minister at that point was noncommittal. He didn't say no. He didn't say yes. I hope the answer is going to be yes. I try to follow what the minister's pronouncements have been to help us inform our debate on Bill 27.

I'll ask the parliamentary assistant: Has the minister formally responded to that request of the task force or do

we expect an answer soon, and are members in favour of that agricultural subcommittee?

**Mrs Van Bommel:** The intent is to establish a subcommittee for agriculture. We have turned that over to the Minister of Agriculture, because I think it's appropriate for the Ministry of Agriculture to establish that. At this stage there is nothing formally established, but the intent is definitely there.

**Mr Hudak:** OK. Has Mr Gerretsen, the Minister of Municipal Affairs and Housing, formally responded to that request of the advisory group and said, "Yes, we need to move forward with the agricultural committee," or did he basically pass that over to the Minister of Agriculture?

1730

**Mrs Van Bommel:** No, we have said that we are moving forward with an agriculture committee.

**Mr Hudak:** So it is going to happen.

**Mrs Van Bommel:** Yes, it is.

**Mr Hudak:** The consultation committee had asked that it report back, I believe, by October 2004. Has that goal been agreed to as well by the minister?

**Mrs Van Bommel:** I don't know in terms of the agriculture committee, although that would certainly fall in line.

**Mr Hudak:** Do staff know if the minister has formally responded to that request and indicated the date when the committee will be responding?

**The Chair:** Mr Hudak, you're speaking to the amendment at the present time?

**Mr Hudak:** Certainly, because I believe this amendment would be one of the issues the agricultural committee would address in terms of infrastructure support. While I hope this amendment passes, if the minister is committed to this process, it makes the amendment still important, but somewhat less important if there is a parallel process that's going to address this type of issue.

**Ms Konyi:** The minister, as Ms Van Bommel said, has referred it to the Minister of Agriculture to deal with. There has not been a formal terms of reference out to the public yet, but the commitment has been made to have this committee.

**Mr Hudak:** OK, so a public commitment has been made to have the committee. It has been referred to the Minister of Agriculture to set it up.

**Ms Konyi:** The details of it are to come forward shortly.

**Mr Hudak:** And the Minister of Agriculture has agreed to move forward in the process?

**Mrs Van Bommel:** Yes, he has.

**Mr Hudak:** OK. That's good news to us, and I think that stakeholders who are following this bill, particularly from the agricultural point of view, will find that an important and beneficial development.

That having been said, I would expect they'd be addressing some of the infrastructure issues that support our farmers, including the mid-peninsula corridor. So if I don't have the votes for this to pass, I can at least have some satisfaction that the issue would be addressed



through a parallel process in the context of highway infrastructure development.

As I said, the grape growers, as one commodity group, made the point in their presentation that in order to reduce development pressure on the lands along the QEW and to direct that pressure to the southern areas, an alternative link across the region, above the escarpment, is required. I think it's an important point. I think what they mean by "above the escarpment": The general description is an area that's not addressed by schedule 1 of this bill. I think between Lake Ontario and the Niagara Escarpment and some of the municipalities in the tender fruit area are addressed, as outlined in the escarpment act. My expectation would be fully that those proponents of the mid-peninsula corridor, like the grape growers and the wine council and, I expect, the regional municipality of Niagara—again, we didn't hear their presentation due to unfortunate circumstances—would support the notion of directing development away from the tender fruit area and above to the south of the escarpment area.

I don't believe it's the government's intention to limit growth across the board. I think they've been—at least I've interpreted their feelings to be quite clear that the urban sprawl is their concern, and they want to direct growth to the appropriate areas.

The other point to this amendment is that that does fit in with the government's overall goals of directing growth to appropriate areas, some underutilized land capacity and in areas in southern Niagara, western Niagara and Dunnville as part of Haldimand county that have not experienced the same degree of growth that those along the QEW have. So I think it fits with your goals through Bill 27 in a couple of important ways.

The second part of the amendment, clause (2.1)(b), references a new racing facility at Mohawk Raceway. I understand the bill would give the minister the opportunity to create exemptions in these areas. Is that right?

**Mrs Van Bommel:** It would have to go through cabinet.

**Mr Hudak:** Sorry, it says "Lieutenant Governor in Council."

**Mrs Van Bommel:** Yes.

**Mr Hudak:** OK. Woodbine Entertainment Group came forward and made, I think, an important presentation about how they could grow and how the spinoffs would benefit the farming community, but that the MZO and the bill would restrict their ability to go ahead with their project and may, in fact—I'd probably have to go back and review in detail—direct that expansion project into the urban area. So then it wouldn't be lined up with Mohawk Raceway, which is currently outside the urban area.

I guess to be clear, while exemptions can be granted by the Lieutenant Governor in Council, we have not been given any guidance as to the criteria for those types of exemptions or time frames on those exemptions. Do we know?

**Ms Konyi:** I'm sorry?

**Mr Hudak:** There are a couple of ways to address the important points that WEG brought forward. Either it

could be changed through the bill or an exemption process is part of the bill. What's not clear, and maybe there have been some statements of intent that we're not aware of—but have there been criteria outlined or specific standards as to when the Lieutenant Governor in Council would grant an exemption under this act, or when would we have an understanding of what kinds of exemptions may or may not be granted?

**Ms Konyi:** First, the Minister of Municipal Affairs and Housing did ask the Greenbelt Task Force, when he first appointed them—one of the first tasks he asked them was to give him some advice on the circumstances where it would be appropriate to grant relief from the moratorium, either through the minister's zoning order or, should Bill 27 come into effect, through the legislative moratorium.

The task force did provide the minister with some recommendations. They are things like: The proposals should be far advanced in the process; they should be very minor in scale or scope; they should not result in the extension of any sort of infrastructure, except to service an existing urban development already; and it shouldn't have an impact on long-term permanent greenbelt protection. That's the idea behind what has been contemplated at this point in time. But as the bill is not in effect, and you have to have it in effect to pass a regulation, that's as far as we are with that.

**Mr Hudak:** I appreciate that, and thanks for the reminder on the consultations and some of the suggestions of circumstances for exemptions. That may not be encouraging for WEG, but I'm sure it's encouraging for other groups that have come before the committee.

Nonetheless, since this group brought this plan forward, I think it's important for us to have the debate on whether that's a worthy amendment to the bill. The debate may also give some guidance as to what circumstances may be appropriate for exemptions under the act.

Some of the benefits that WEG brought forward—and, by way of background, the Woodbine Entertainment Group is a not-for-profit operation but a significant business nonetheless, and the largest operator of horse racing within the entire country of Canada. An important point that's relevant for this committee is the spinoffs in the agricultural sector. I think the transformation that we've seen in the racing industry, from being in, really, the economic doldrums to, today, being an example to racing jurisdictions across North America is quite evident. With respect to agriculture and the greenbelt area, WEG made the point that when the racing facilities are successful, then there is spinoff, whether that's on the breeding side of the industry or the training facilities that have certainly popped up. While the community of Fort Erie is not within the proposed greenbelt area, you can see from the Fort Erie racetrack a number of training facilities that have developed and then on-farm labour that's occurred. I make the argument that as more of these types of facilities are developed in concert with the growth of the racing industry, the greater economic wherewithal to farming operations that support the horse racing industry,



not only on the horse side, but in feeding the horse, in hay and other types of operations. So WEG makes that point.

1740

From the other point, the bill tries to address, and I think the members across would acknowledge or would suggest, a balance between where growth is appropriate and where it's not, and job creation with respect to balancing sensitive environmental areas. WEG made the point that the total value of their proposal would be about a \$72-million facility. It includes a golf course, but I think we've beaten that horse on the golf courses.

Is this something that's appropriate in a greenbelt area or not? Parts of it, I think, are OK. If I understand the presentation, it's relatively well advanced in the planning process. Again, I don't recall the details. But where this development would take place is not currently designated as an urban settlement area as defined by the bill in section 1 that we had just covered a few moments ago.

WEG also went on to make the case that it is a significant economic generator, that it would create a significant number of jobs and investment, I would expect, around the facility but probably in the agricultural areas as well—and, I would think significantly, while I don't have the particular farms, I would expect a number of farms that are within the boundaries of the greenbelt study area. Certainly if our goal is to maintain farmland, not as parkland but as farmland, a project like the Mohawk expansion would help move that goal forward.

So I recognize that it fits into an area that the minister is still looking forward to a response on when exemptions could be granted. At the same time, I think it's important for us to recognize that projects that are good for horse racing will have spin-off benefits for agricultural land within the greenbelt area. To be specific on the point, it's estimated that it would generate over \$155 million, according to their presentation, of new direct and indirect regional expenditures, which translates to about 1,400 person years of employment.

Just by way of background on this point, some of the areas that are outlined in schedule 1, as I mentioned, benefit significantly from Mohawk, Woodbine, as well as the other horse racing operations. In their presentation to this very standing committee, they were kind enough to give us a chart that talks about the number of farms that benefit from these projects. So, by way of example, as we had talked about earlier, the regional municipality of Halton, covered in its entirety by the greenbelt study area, has about 1,000 farms, almost 14,000 horses, and the annual economic impact from successful agricultural production is almost \$94 million. So if you want rural communities or all communities in the greenbelt area to continue to be successful, growing and wealthy, certainly the success of the horse racing industry would be an important part of that.

We can see from the statistics provided by Woodbine in their presentation on Bill 27 and their case why 2.1(b), if they don't get an exemption, they may see this as another alternative, why they'd like to see this move forward through the legislative process.

Peel: a smaller number of farms altogether, about a \$71.6-million benefit to the local economy.

We talked about the Hamilton-Wentworth area being similarly impacted by this bill: 874 farms and about \$51.3 million in economic benefit.

So the point that we've tried to make consistently is that if we have support systems there for agriculture, of which 2.1(b) would be one such example, and the points that I brought forward last time, the committee met with respect to wineries, greenhouse operators, etc—I think if we look at some of the economic—you probably doesn't want to get this in the way of policy; you probably would be more hesitant for direct subsidies to farms. You may very well visit that policy, but my expectation would be to try to create a healthy economic environment to support our farmers and therefore maintain that land in agricultural production. We heard over and over again that if you want to save the farm, you save the farmer.

But it seems to me that projects that—for example, Mohawk has brought one forward, or other areas that have significant spinoff benefits in the agricultural community—fit with the government's goals of maintaining that land in agricultural production, and therefore maintaining a contiguous greenbelt between the Niagara River all the way across the Pickering area—I would expect that's the goal.

In conjunction, I think these types of amendments can have a very powerful effect in terms of doing two things: making the agricultural production more valuable and therefore having more farms likely to stay in production, and, in combination with the mid-peninsula corridor, taking away some of that pressure, diverting some of that pressure to other parts of the province, specifically the south and southwest of the peninsula. Therefore, farmers would be less likely to sell their land that would be potentially lost forever from agricultural production.

That's why I think this amendment is important. As I said, I recognize there may be other processes. They could move forward the mid-peninsula corridor, and maybe the parliamentary assistant or other members of the committee could give me the sense that the mid-peninsula corridor will move forward at a greater pace than it seems to be currently. Secondly, with respect to the Mohawk Raceway, if this is the inappropriate venue to address that particular project, is there another option for Mohawk that will continue to benefit the associated farm industry in that area?

I understand Ms Churley's not in support of this particular amendment, but maybe the government members will be in support. Mr Hardeman has already spoken about this a little bit. But if you're not supportive of this amendment, maybe give me some succour as to how these two important projects could still move forward, could support economic development in, I would argue, a balanced way and, third, really help to move forward the goals of Bill 27 before us. You're going to support the farmer. You're going to take some pressure away from the areas you've identified that are currently suffering from significant pressure. You'll help a significant eco-



conomic project advance, which will help create jobs, outside of Toronto, particularly, and maybe then divert some of the pressure for new homes for those who are going to work through Mohawk or at the jobs the mid-peninsula corridor could bring, and help move those homes and those jobs outside of the greenbelt area.

Therefore, I will move this amendment to a vote. Hopefully, government members, if they don't support it, will help us understand other ways these projects could advance, if they don't think this is the appropriate venue.

**The Chair:** It is moved by Mr Hudak. Are there any other comments or questions? Mr Hardeman.

**Mr Hardeman:** Just very quickly—I wouldn't want to prolong the proceedings here; it would be inappropriate. Obviously, our time is much too valuable for that.

I think it's important to read subsection 2(2.1). I'm not quite as ready to give up on the government members' voting in favour of this amendment as my esteemed colleague is. This amendment really doesn't do anything; it just makes sure that that which needs to happen can carry on happening. It doesn't say that the new facilities at the raceway would be approved; it just says that "the establishment of the greenbelt study area does not in any way prohibit or interfere with the planning, design, approval process." So whatever they need to do in order to get the approval still needs to be done; it's just that they don't have to stop, during this moratorium, doing what it is that needs doing.

Mr Hudak pointed out the value of the racing industry to this part of Ontario and in fact to the whole Ontario economy. In fact, he just pointed out to me it's even valuable in my community. In Oxford county we have

1,524 farms, an estimated 8,309 horses, and \$56 million is generated.

I just want to point out that I'm not suggesting the government should change the approach they've taken in their legislation, but I think this does provide, not assurances to Mr Hudak and myself or even the opposition, but assurances to the people in the industry that they can carry on with the process, so they will not be delayed six months or longer because they have to stop the process. I see this in no way weakening or changing the legislation so that the government cannot accomplish exactly what they've set out to accomplish.

Having said that, I would ask for government support of the amendment.

**The Chair:** We'll now move to the vote on motion 3.1.

**Mr Hudak:** Recorded vote.

#### Ayes

Hudak.

#### Nays

Arthurs, Delaney, Dhillon, Duguid, Parsons, Van Bommel.

**The Chair:** The motion is defeated. Now we will have to adjourn because there is a vote. We will adjourn until June 9, 2004, at 3:30 in the afternoon.

*The committee adjourned at 1751.*





## CONTENTS

Monday 7 June 2004

<b>Greenbelt Protection Act, 2004, Bill 27, <i>Mr Gerretsen</i> / <b>Loi de 2004 sur la protection de la ceinture de verdure</b>, projet de loi 27, <i>M. Gerretsen</i>.....</b>	<b>G-417</b>
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Mr Vic Dhillon (Brampton West-Mississauga / Brampton-Ouest-Mississauga L)

Mr Wayne Arthurs (Pickering-Ajax-Uxbridge L)

Ms Marilyn Churley (Toronto-Danforth ND)

Mr Bob Delaney (Mississauga West / Mississauga-Ouest L)

Mr Vic Dhillon (Brampton West-Mississauga / Brampton-Ouest-Mississauga L)

Mr Jean-Marc Lalonde (Glengarry-Prescott-Russell L)

Ms Deborah Matthews (London North Centre / London-Centre-Nord L)

Mr Jerry J. Ouellette (Oshawa PC)

Mr Ernie Parsons (Prince Edward-Hastings L)

Mr Lou Rinaldi (Northumberland L)

Mr John Yakabuski (Renfrew-Nipissing-Pembroke PC)

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Mr Brad Duguid (Scarborough Centre / Scarborough-Centre L)

Mr Tim Hudak (Erie-Lincoln PC)

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#### **Clerk / Greffière**

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G-18



G-18

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# Official Report of Debates (Hansard)

Wednesday 9 June 2004

# Journal des débats (Hansard)

Mercredi 9 juin 2004

## Standing committee on general government

Greenbelt Protection Act, 2004

## Comité permanent des affaires gouvernementales

Loi de 2004 sur la protection  
de la ceinture de verdure



Chair: Jean-Marc Lalonde  
Clerk: Tonia Grannum

Président : Jean-Marc Lalonde  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 9 June 2004

Mercredi 9 juin 2004

*The committee met at 1549 in room 151.*

## GREENBELT PROTECTION ACT, 2004

LOI DE 2004 SUR LA PROTECTION  
DE LA CEINTURE DE VERDURE

Consideration of Bill 27, An Act to establish a greenbelt study area and to amend the Oak Ridges Moraine Conservation Act, 2001 / Projet de loi 27, Loi établissant une zone d'étude de la ceinture de verdure et modifiant la Loi de 2001 sur la conservation de la moraine d'Oak Ridges.

**The Chair (Mr Jean-Marc Lalonde):** I will call this meeting to order to resume clause-by-clause. We are now on motion number 3.2. It's a PC motion.

**Mr Tim Hudak (Erie-Lincoln):** I'm pleased to present—

**Ms Marilyn Churley (Toronto-Danforth):** Déjà vu all over again.

**Mr Hudak:** This one's very different. Well, it's on a similar line. I move that section 2 of the bill be amended by adding the following subsection:

"(2.1) The establishment of the greenbelt study area shall be further defined with reference to the urban growth studies completed by all municipalities within the greenbelt study area.

"(2.2) The study of the area described in section 2 shall include:

"(a) an agricultural framework necessary to support farmers and keep farming economically viable in the greenbelt area;

"(b) the transportation corridors necessary to promote economic growth;

"(c) the economic support necessary to support municipalities whose growth will be limited;

"(d) the development of a 'growth management' study which includes a 50-year plan for efficient and cost-effective public service facilities and infrastructure location, housing and employment areas;"

**The Chair:** Are there any comments or additional information on this motion 3.2?

**Mr Hudak:** If nobody else wants to speak, I'll grab the floor.

**The Chair:** I'll let you explain whether there is any additional—

**Ms Churley:** Explain yourself.

**Mr Hudak:** Explain myself.

This is a bit of an amalgamated motion from input from a number of stakeholders. I don't have at hand—and maybe I soon will for (2.1).

There are a number of municipalities in the greenbelt area as defined by the current version of the legislation that have gone through, or are in the process of, urban growth studies. The view put forward was that the new urban boundaries should be those that are considered by the greenbelt area, as opposed to those that existed as of the bill's introduction in December 2003.

As I think members well know, since these processes take a considerable amount of time to go through the studies, through the public consultations within the community, and to make sure they're consistent with any kind of provincial legislation, it would be a tremendous amount of work to start again. I do not believe any of those particular projects were prejudiced in any way and I think they went through the rules properly. So it would be appropriate to recognize those in the greenbelt study area, particularly when I make my point that a fair expectation would be that the permanent greenbelt legislation would probably be based considerably—it remains to be seen, but it's a fair expectation that it would be based considerably—on the existing legislation, the sort of reform Bill 27 has, and, if it passes the Legislature, will probably be a basis for the next bill.

Let me see what I have here. The Urban Development Institute was one such group. They said that when municipalities are considering urban expansion, they must undertake an exhaustive process to justify that kind of expansion, including consultation with multiple provincial ministries and with the public. They cite a Halton urban structure review from 1989 that took 10 years to complete at the regional level alone. The UDI's point was that Ontario already has one of the most comprehensive planning and public processes in North America with respect to urban boundaries.

The city of Pickering made a similar point that this amendment addresses. Pickering established a strategy to manage its growth. We heard that they hired Dillon Consulting to complete an arm's-length review, which they then brought forward to the Minister of Municipal Affairs. I think Pickering expressed that they did not want their work to go to waste. They believe that it appropriately incorporates growth management studies and that this bill should incorporate growth management studies that had happened already at the local level.



I think there were other municipalities—and I apologize, I don't have them at hand—that may be caught up in this process, and that's what (2.1) of the motion would seek to address.

Subsection (2.2) gives us some of the main points that I and some of my colleagues in the official opposition have made about what's missing in this bill. First and foremost, I've said I think an agricultural framework is absolutely necessary to go hand in hand with Bill 27. Once more, if you want to save the farm, you must save the farmer.

On this point, we had an indication yesterday through staff that the Minister of Municipal Affairs had committed to the greenbelt consultation group, that he was in favour of a similar panel on agricultural issues. Is my recollection accurate?

**Mrs Maria Van Bommel (Lambton-Kent-Middlesex):** Yes.

**Mr Hudak:** I think we had asked for, and hopefully we will get, a copy of the correspondence. We wrote a letter to the minister, co-signed by Mr Hardeman and myself, just trying to get that confirmation in writing. I appreciate staff's and the parliamentary assistant's acknowledgement of that. We don't yet have—

**Mrs Van Bommel:** Would you like someone to speak to that?

**Mr Hudak:** Sure.

**Mrs Van Bommel:** I'm going to ask John MacKenzie of the minister's staff.

**Mr John MacKenzie:** We did receive your letter and it will be responded to shortly. I just want to confirm—from your letter it seems that you may be unaware of a previous announcement. It sounds like you are aware now that the Greenbelt Task Force and the government, through the Greenbelt Task Force on May 20 at the King township consultation meeting that was taking place there, made—the task force chair, Mayor Robert MacIsaac of Burlington, announced that the province is acting on the directions of the task force and is moving forward to establish an agricultural advisory team to deal with a number of the concerns raised during planning reform and greenbelt consultations.

Right now the Ministry of Agriculture and Food is working on that. That team will consist of key agricultural stakeholders and will be supported by an inter-ministry team. The scope of the work that the advisory team will be undertaking will be province-wide in nature, not simply limited to the greenbelt study area. The Ministry of Agriculture and Food will be leading this initiative and will be reporting back with advice to the Minister of Agriculture and Food by late summer or early fall.

**Mr Hudak:** OK. I thank Mr MacKenzie for that information. I think that will be well received by the agricultural community. On that point, the commitment is for a province-wide agricultural committee with various representatives of various commodity groups etc. So it has a significant mandate if it's province-wide.

To what degree will the agricultural community in the greenbelt study area be featured prominently or early in that report? The only concern I have is, if it's a province-

wide engagement—it's a healthy process to go through—I worry that answers specific to the greenbelt and how they're impacted by Bill 27 will be some time in coming. So will it play a prominent and early role?

**Mr MacKenzie:** A member of the Greenbelt Task Force is the representative from the Ontario Federation of Agriculture and has been involved in fleshing out the type of work that would be conducted by this advisory team. They have been involved up front and will be involved throughout this process. Again, the lead ministry is the Ministry of Agriculture and Food. They're probably the best to speak to this directly, so I'd defer to them.

**Mr Hudak:** OK. Maybe I'll ask the parliamentary assistant if she would be kind enough to take an undertaking on behalf of myself and hopefully the other members of the committee. I think the agricultural committee, in responding to the task force advice, is certainly good news, and I think looking at the state of agriculture in the province of Ontario as a whole is good news in the broad-based approach. It certainly addresses a large number of questions.

We're moving ahead. The greenbelt legislation, Bill 27, is moving through the legislative process. My only concern is that I don't want it to get lost in that process. The issues that are impacting the agricultural area because of Bill 27 are here before us today. I know it's the Ministry of Agriculture that's making these decisions. Could we have some advice, some lobbying, some advocacy through the parliamentary assistant, that the agricultural community in the greenbelt will feature early in that process? Because Bill 27 is now before us.

**Mrs Van Bommel:** I certainly can't speak for the Minister of Municipal Affairs or the Minister of Agriculture, but as farmer I will certainly take those concerns forward. Sustainability and viability are issues all through the province in terms of agriculture, so when we speak of saving the farmer in order to save the farmland, that is a province-wide issue, and we need to address that. I will certainly take forward the concerns around the need to address the greenbelt area early in the process.

**Mr Hudak:** Yes. I appreciate that, if you can advocate on behalf of the input you have heard as part of this committee from farmers in the greenbelt area. I recognize that some of the issues are the same across the province. There are a number of agricultural issues that this committee will be looking at, and hopefully moving forward on, through the ministry or other ministries.

It's just that the concerns are clear and present as presented to the committee. It's very contemporary to Bill 27. So if members are being asked to vote through committee or in the Legislature on Bill 27, what helps me is some solace that those particular issues in the greenbelt area—in terms of what a farmer could do with his or her land, the value-added side and some of the planning rules around that—will be addressed early in the process. I think that's a very fair request to make.

1600

**Mrs Van Bommel:** I would certainly advocate for that.



**Mr Hudak:** Thank you. I appreciate that from the parliamentary assistant.

So clause (a), my preference was to include that in the legislation. I'm noting particularly the greenbelt area and I do at least appreciate the commitment from the two ministries to move ahead with that agricultural committee.

"(b) the transportation corridors necessary to promote economic growth": As I said the last time we met, there are two processes taking place: Bill 27, and then Minister Caplan's process on growth management as a whole. He'll be looking at transportation corridors. With two ministries working, I worry that it might be independently, it might a silo-type approach, and that we will not hear back from the Ministry of Public Infrastructure Renewal in time on the real and present concerns of Bill 27. The mid-peninsula corridor was just one.

Clause (c) was "the economic support necessary to support municipalities whose growth will be limited." We certainly have heard that from a number of them. We'll see what the permanent legislation looks like, but they'll be boxed in within their current boundaries. Their ability to rezone or allow particular projects outside of the urban area will be limited. That does fit with what I think the government is trying to do with Bill 27, but I think you need to recognize that municipalities' future growth will be constrained.

By way of example, if you're talking about the town of Lincoln—and we heard from the mayor. If you're developing a greenbelt area, which is to be a jewel for the province as a whole, I think it unfair that the taxpayers of Lincoln bear the financial cost of that. They'll be limited in their growth and they'll be limited in their job opportunities as a result of this legislation, if the permanent legislation resembles this. As such, I think there should be a transfer to them to assist them or to compensate for their loss of opportunity, whether that's through the CRF, a transfer through the province right now, or some other type of transfer.

I think we do need to recognize that municipalities will be impacted by Bill 27. Their future growth will be impacted. If they can't grow and they still want to improve services or reinvest in infrastructure, their only opportunity then would be to raise taxes on locals as opposed to assessment growth, which would be constrained.

So I think it's important as part of this bill that we recognize the impact, particularly on the small municipalities, and move forward with some assistance to them so that if they are part of the greenbelt area, they would continue to benefit from growth and revenue, as well as benefiting from being part of a greenbelt.

The fourth point comes from, I believe, a presentation by the UDI about ensuring an appropriate supply of land to make sure that growth in the province well into 50 years can be accommodated, that we don't lock ourselves in and find that we cannot accommodate that growth.

So I think those four pillars, in addition to the existing urban growth studies, would help improve this legislation

and address three of the main concerns we've heard from deputants in terms of the agricultural plan, the transportation plan and how we're going to help out municipalities that will be constrained by Bill 27 if their future growth is limited.

**The Chair:** Other questions and comments?

**Ms Churley:** Just briefly, because I really want to get on to some of my amendments, which are quite the opposite of the PC amendments. Although I support certain aspects of this amendment, particularly the agricultural framework, which I believe is going to be done, I believe that this goes in the opposite direction of where at least this bill is attempting to go. It's certainly not in the interests of establishing a greenbelt to be building in, for instance, the transportation corridor. If it were talking more about public transportation, rail, all of that kind of thing specifically, I might be more supportive.

Clause (d) in particular, I'm not quite sure—and I'm not asking the question; I'm just saying I understand to the extent that I know that I can't support that at this time because I have an amendment coming up; in fact, I think it's next—that talks about holding off on new highways and infrastructure until the study is complete. Therefore, I will not be supporting this amendment.

**The Chair:** Any other questions or comments?

**Mrs Van Bommel:** No further comments.

**Mr Hudak:** I appreciate Ms Churley's comments. The government member is not making comments?

**The Chair:** No, they're not.

**Mrs Van Bommel:** We're not making any further comments.

**Mr Hudak:** One area of discussion we have not yet had in any detail is (2.2)(c), and that's with reference to municipalities who would be constrained by the greenbelt area. If you don't feel this is an appropriate amendment, is there recognition that municipalities will have limited growth as a result of Bill 27?

**Mrs Van Bommel:** This is a short-term interim bill, and I think all those issues would be better dealt with in future legislation.

**Mr Hudak:** I think it's important. Fair enough. The goal is to have this bill in place and a more permanent bill brought in in the fall session of the Legislature, I guess. But it is a real concern expressed by municipalities, particularly the small municipalities, that if they are locked into particular boundaries—and I would expect that would be a principle in a permanent bill; maybe not—their growth would be limited. Does the government recognize that municipal growth is constrained when municipalities have no option to increase their urban boundaries?

**The Chair:** Mr Hudak, as Mrs Van Bommel just mentioned, this is an interim bill that is a moratorium while they're doing the study. There will be other consultation after this study is completed, but at the present time I don't think anybody on this committee could say what is going to happen after.

**Mr Hudak:** I'm not looking for predictions on what the final bill is going to look like. We've tried—and



we've heard from deputations—to point out some areas—I think while there's support for greenbelt in principle, maybe not from all the delegations but from a vast majority, they have pointed out where some flaws may exist or where other questions need to be answered. Maybe you could help with the consultations that are happening today with respect to limiting municipalities. Have we had input or recommendations from the panel on how we can address the issues of municipalities having limited growth?

**The Chair:** I believe the consultations are not over yet. They're still doing the consultation.

**Mrs Van Bommel:** That's right. They're still ongoing.

**The Chair:** It's ongoing at the present time. So it is a little premature to come up with a report.

**Mr Hudak:** OK. But they've done an interim report. The consultation panel has done an interim report that was sent into the minister with advice. Did the interim report address each—

**Mrs Van Bommel:** There is a consultation document, but there is no interim report. The consultations are still ongoing.

**Mr Hudak:** OK. Fair enough. I'm sorry. You'd term it an interim consultation document. There's a response from the committee, right, back to the minister that they're using for further input?

**Mrs Van Bommel:** Consultations are still ongoing.

**Mr Hudak:** I understand that. They put together a publication. Let me get my phraseology correct. The consultation panel put together a publication, which they released a few weeks ago.

**The Chair:** Everybody has received that copy. Every one of us has received—

**Mr Hudak:** What do you officially call it?

**The Chair:** Did you have a chance to read it, Mr Hudak?

**Mr Hudak:** Yes, and you know what? I forget exactly what the cover said. What do you actually call it?

**The Chair:** Oh, you have a copy of the cover there? Probably Mr Hudak would remember reading it.

**Mrs Van Bommel:** It is the Greenbelt Task Force Discussion Paper.

**Mr Hudak:** So it's a discussion paper. They've presented a number of options. I would call that giving advice. They presented a number of options in a series of areas.

Help me with my recollection. Did they address this issue about municipalities and municipalities potentially being limited in growth as part of a greenbelt process?

**The Chair:** I think to be fair to the ministry people, as I said, every one of us has received a copy of that, and if we have done our homework, we would have seen if the answer to the question you're asking—it's in there?

1610

**Mr Hudak:** I just think it's a very important concern that municipalities have. I guess before we vote on Bill 27 or move it through the committee process—and then any kind of advice we'd give back to the Legislature—

I've got to think it's important for some reassurance to municipalities that the government recognizes that that may be a challenge and intends to address it. Or maybe it's not seen as a challenge that municipalities are going to face.

**The Chair:** Any other questions or comments? If none, I will proceed with the vote.

Those in favour of motion number 3.2?

**Mr Hudak:** Recorded vote.

**Ayes**

Hudak, Ouellette.

**Nays**

Arthurs, Churley, Delaney, Dhillon, Parsons, Rinaldi, Van Bommel.

**The Chair:** Motion number 3.2 is defeated.

Now we'll proceed with the vote on this section.

Shall section 2 carry?

**Mr Hudak:** Recorded vote.

**Ayes**

Arthurs, Delaney, Dhillon, Parsons, Rinaldi, Van Bommel.

**Nays**

Churley, Hudak, Ouellette.

**The Chair:** The amendment is defeated. Section 2 is carried.

Motion number 4. It's an NDP motion. Ms Churley?

**Ms Churley:** At last. Mr Columbo has conceded the floor.

I want to move an amendment to section 2.1. I move that the bill be amended by adding the following section:

"Freeze on certain activities

"2.1(1) Despite any other provision of this act or any other act, no permission or approval shall be given or granted under the Planning Act or the Environmental Assessment Act in respect of land in the greenbelt study area that would have the effect of allowing,

"(a) the creation of a new highway or expansion of an existing highway; or

"(b) the expansion of any sewer or water system beyond existing settlement areas except where required to service existing dwellings in the greenbelt study area.

"Effect of contravention

"(2) Any permission or approval that purports to be given or granted in contravention of subsection (1) is of no effect."

**The Chair:** Thank you, Ms Churley. Is there any additional information you would—

**Ms Churley:** I'll just explain very briefly why—actually, in the last session I did give some details and

did mention that this amendment would be coming forward. It's a well-established fact—nobody disagrees any more—that transportation corridors guide development. You build them and they will come. It's the same thing with building other infrastructure, sewers and that kind of infrastructure.

Again, I would say this is pretty key, because in some ways, to not include those right now is leaving out some of the most important things to preserve the greenbelt area, because if you have that kind of highway and infrastructure built, it will build up the pressure to amend the greenbelt later on to allow development. Once you have the highways there, once you have sewer systems put in, big pipes or whatever, then it's there, and you can imagine the pressure, either on your government or future governments.

There are also loopholes in the bill, if it's passed the way it is, that would allow exemptions. But even if the exemptions wouldn't be given, it would build up a lot of pressure on your government or future governments to allow development to go ahead.

So I think it's foolhardy to not—I don't know if the government missed it, but I doubt it, because I know you're having to work with many ministries that have vested interests, working with the developers, working with the municipalities and especially working with the Minister of Transportation. We all know Ministries of Transportation love to build highways if they have the money.

I would say again that I don't think we're going to be seeing any money forthcoming for any of these highways for the time being, although I asked the parliamentary assistant last time and I did ask that somebody from the Ministry of Transportation be here to answer my question around timing of new highways. Is there somebody here? Is this an appropriate time for that person to come forward?

**The Chair:** Could you state your name, please?

**Mr Bruce McCuaig:** Bruce McCuaig, Ministry of Transportation.

**Ms Churley:** Thank you very much for coming, Mr McCuaig. Because this is a big concern of mine, I just wanted to get some clarification, to your knowledge, on the timetables for some of the highways in the greenbelt area, in terms of proceeding with those highways. Do you have that information?

**Mr McCuaig:** I can respond to questions about specific corridors to the best of my ability, yes.

**Ms Churley:** OK. Let me find my list here; there are quite a few of them. What about the eastward extension of Highway 407 to Highway 35/115?

**Mr McCuaig:** The 407 east completion is currently in the environmental assessment process. It has been pursued in the context of the region of Durham official plan, which establishes the principle of development in terms of growth management in that area. It's in the process, right now, of public consultation on what's called the terms of reference for the environmental assessment.

The government has committed to do a full environmental assessment. That would mean all alternatives to

the project will be considered through that process, including transit, rail, other roads and highways, and other alternatives to the initiative. In the course of the environmental assessment, we will of course look at the social, economic and environmental impacts of different alternatives and try to evaluate the best possible alternative through the process.

**Ms Churley:** Thank you for that. That's very interesting, because the previous government changed the EA process so it could be scoped not to include these things. So you're telling me that in this case the EA process is not being scoped and that you are looking at alternatives to the undertaking and at social impacts.

**Mr McCuaig:** The minister and the government have committed to undertake a full environmental assessment.

**Ms Churley:** Good.

**The Chair:** Thank you.

**Ms Churley:** I have more.

**The Chair:** To MTO?

**Ms Churley:** Yes. That's just one highway.

Very quickly, do you have any idea how long that process might be?

**Mr McCuaig:** Depending on the issues that emerge through the environmental assessment process, typically it's about a one-year process for the terms of reference and anywhere from a three-year-plus process for the actual environmental assessment. Subject to the approvals and land acquisition, design and construction take place, and that really is a function of the size of the project and the availability of funds to make the investment.

**Ms Churley:** Do you know if any intervenor funding has been, or will be, provided for citizens' groups?

**Mr McCuaig:** I'm not aware of that.

**Ms Churley:** Maybe I can take that up with the AG's office.

The extension of Highway 404 around the east and south sides of Lake Simcoe.

**Mr McCuaig:** That project has received approval under the provincial Environmental Assessment Act, and it's currently going through a preliminary design stage. Again, that was pursued in the context of the approved development contained in the region of York official plan.

**Ms Churley:** Have funds been released to do that highway?

**Mr McCuaig:** No, we're still in what we would consider to be a planning stage. So again, the funds for land acquisition and construction are still decisions to be taken.

**Ms Churley:** OK. The northward and eastward extension of Highway 427 to Barrie.

**Mr McCuaig:** On that particular initiative, there has been past work done on what's called a needs assessment to establish the need and justification for the project. Again, it's contained within the official plans of the regions of York and Peel, so we're moving in concert with the local official plans. The next step in that process would be to continue the development of environmental assessment terms of reference, and we would anticipate



that the timing for that could be in the fall. Again, it's wrapped up with the government's plans for a growth management strategy for the Golden Horseshoe area. So the timing for this project will also emerge from decisions the government could take around the growth strategy.

1620

**Ms Churley:** So within what time frame do you think this one could be built?

**Mr McCuaig:** This would be a longer-term initiative. Again, a formal environmental assessment has not been initiated, so it's further out in the time spectrum.

**Ms Churley:** OK. The construction of the new mid-peninsula highway from Burlington to the US border in the Niagara region?

**Mr McCuaig:** The minister and the government are committed to doing a full environmental assessment, so we're in the process right now of preparing the documents for that environmental assessment. We've been working with the regional municipalities and the communities in the area. We would anticipate that in the fall we will be going out to the public for consultation on that initiative.

**Ms Churley:** So is there a commitment as well for this EA to look at alternatives to the undertaking, alternatives to the site and social impacts, all of those? The same thing—a full environmental assessment?

**Mr McCuaig:** Correct.

**Ms Churley:** Great. The creation of a new east-west GTA transportation corridor?

**Mr McCuaig:** That project is, again, an even further longer-term strategy. Very little work has been initiated on that process. The first step will be to do some needs assessment work that would consider the transportation problems in the area and decide how to pursue that in the context of a growth management strategy for the area.

**Ms Churley:** The last one I wanted to ask you about is the extension of Highway 410 northward, I understand, at least to Highway 89.

**Mr McCuaig:** There is a project right now for a small extension of Highway 410 to connect with Highway 10, far south of Highway 89. We have no plans to do any further extensions at this point in time. I'm not sure I have the exact location of the extension, but it is nowhere near Highway 89.

**Ms Churley:** Just one final question. I don't know if you're in the position—

**Mr McCuaig:** If I could just—it's actually in north Brampton, so it's in the urban area.

**Ms Churley:** OK, thank you. I don't know if you're in a position to answer this, because it's more about the environmental assessment process. Would the environmental assessment process look at things like the impact of when you build a highway? It creates development. The development comes, and the impact of that is more urban sprawl, more smog, more traffic jams and all those things. Would those be the kinds of things that could be brought forward to be looked at in a full environmental assessment?

**Mr McCuaig:** A full environmental assessment first starts with a definition of what the needs and the problems are in the area. That's based on local, regional and provincial planning documents and the expected growth in the area. We identify and then evaluate all alternatives too, based upon their relative impacts and the socio-economic and environmental factors.

**Ms Churley:** So it's possible these things could be put on the table to be considered?

**Mr McCuaig:** Yes.

**Ms Churley:** OK, that's very helpful. Thank you very much for helping me get that on the record.

**Mr McCuaig:** You're welcome.

**Ms Churley:** That's all I have. I would urge people to support it, especially the government members, if they're truly committed to establishing a comprehensive green-belt area. I think this is an extremely important amendment.

**Mr Jerry J. Ouellette (Oshawa):** Thanks very much for your presentation. To your knowledge, how long have the 407 discussions in process taken place inside the Ministry of Transportation?

**Mr McCuaig:** On the 407 east completion project? That project first started and entered the planning phase in the late—

**Mr Ouellette:** No, I mean the initial discussions in the movement forward of it. I know of Minister Newman in the Davis years, who had discussions with me regarding that issue, so it goes back a lot longer than the planning stage.

**Mr McCuaig:** The official planning work began in the mid to late 1980s.

**Mr Ouellette:** Are you familiar with the motion that's been brought forward before the committee regarding the expansion of highways?

**Mr McCuaig:** No, I'm not. Sorry.

**Mr Ouellette:** Then you wouldn't know what the potential impact is going to be on the delays of any potential growth?

**Mr McCuaig:** Sorry.

**Mr Ouellette:** OK. Thank you.

**Mr Hudak:** Thank you, Mr McCuaig, for being here today. On the mid-peninsula corridor, you had mentioned that the government now is beginning the process of a full environmental assessment and you mentioned that the next steps would occur in the fall. Specifically, what steps will be occurring in the fall of 2004?

**Mr McCuaig:** Under the legislation, we're required to consult with stakeholders and the public on the environmental assessment terms of reference, so that will be the next step in the process, to have a series of public information centres and other channels to get input into the proposal.

**Mr Hudak:** When could we fairly expect that the terms of reference would come forward for public comment?

**Mr McCuaig:** We would anticipate that near the end of the summer or early fall is the time that it would be released.

**Mr Hudak:** There already was a needs assessment completed on the mid-peninsula corridor several years ago, right?

**Mr McCuaig:** In about 2001, there was a needs assessment document for the mid-peninsula area.

**Mr Hudak:** What's the status of that?

**Mr McCuaig:** It will be included and considered within the context of the environmental assessment process, so the information is not lost. It will be one of the inputs. We will have to refresh and update some of the information and do some additional work.

**Mr Hudak:** So it will be a reference document and it will be used to build the terms of reference for this fall's exercise?

**Mr McCuaig:** It will be a reference document. It will be a major part of the environmental assessment that will be undertaken as we go forward. So again, the work is not lost. It will not be duplicated or redone.

**Mr Hudak:** But the conclusion was that there was a demonstrated need for a mid-peninsula corridor as part of that needs assessment?

**Mr McCuaig:** The outcome of that work was technical work, which indicated that there was a need for additional transportation capacity in that area, yes.

**Mr Hudak:** Didn't it specifically say that there is a need for a new highway, or did it just say transportation infrastructure in general?

**Mr McCuaig:** The outcome of the needs assessment was actually a development strategy that talked about a range of transportation issues, one of which was the proposed mid-peninsula corridor.

**Mr Hudak:** So it would not be accurate for me to say that the government believed there's a demonstrated—let me phrase it a bit more clearly. Is it an accurate statement to say that the government believes there is a demonstrated need for a mid-peninsula corridor at this point in time?

**Mr McCuaig:** I don't think I can respond on behalf of the government in terms of what it believes in that area. I believe that the government and the minister are committed to pursuing a full environmental assessment for that particular initiative.

**Mr Hudak:** Had that ever been concluded? My memory is faulty here. I thought the ministry had indicated that there was a demonstrated need for the mid-peninsula corridor shortly after the 2001—

**Mr McCuaig:** The needs assessment did come up with a recommended transportation strategy that, among a wide variety of initiatives, recommended that we proceed with a mid-peninsula corridor.

**Mr Hudak:** Just further, as part of Ms Churley's motion: If Ms Churley's motion does not pass and you continue at your pace, the consultations then take place through the fall on the terms of reference, and then you'll submit the terms of reference to the Minister of the Environment at about what time?

**Mr McCuaig:** Typically, we would be doing a consultation process that would last a minimum of about three months. But again, I don't have any specific knowl-

edge of the amendment so I can't comment on its impact on the timing of the initiative.

**Mr Hudak:** OK, thanks.

**The Chair:** Any more questions or comments? If none, I will proceed with the vote.

**Ms Churley:** Recorded vote.

**The Chair:** A recorded vote. It's motion number 4, an amendment by the NDP.

## Ayes

Churley.

## Nays

Arthurs, Delaney, Hudak, Ouellette, Parsons, Rinaldi, Van Bommel.

**The Chair:** Thank you. Those in favour of the amendment?

**Ms Churley:** My amendment failed.

**Mr Hudak:** It was a good argument.

**The Chair:** The amendment was defeated.

**Ms Churley:** Yes. Thank you for confirming that.

**The Chair:** Sorry about that.

Motion number 5 on section 3. It's a government motion.

**Mr Bob Delaney (Mississauga West):** I move that section 3 of the bill be amended by adding the following subsection:

"No retroactivity

"(2) Despite subsection (1), in respect of any land covered by the Niagara Escarpment plan approved under the Niagara Escarpment Planning and Development Act,

"(a) subsections 4(3), 5(3), 6(4) and 6(8) do not apply to that land; and

"(b) the reference to 'December 16, 2003' in each of subsections 6(1) and (5) shall be deemed to be a reference to the day this act receives royal assent."

1630

**The Chair:** Questions or comments?

**Ms Churley:** Can I just have a brief explanation? This is not retroactive for the Niagara Escarpment. I'm going to oppose it because it is not retroactive, but could you explain why you're doing this?

**Mrs Van Bommel:** It was because it was not part of the first reading, and we feel that in all fairness we can't go back and include them at this point. We want to have that included, but we don't feel comfortable with doing it in a retroactive way. So in all fairness, we want to start with the passing of second reading.

**Ms Churley:** Could I just make a comment on that? Just so people understand, what this means is that the Niagara Escarpment area is going to receive about half the protection from development compared to other parts of the study area. I hear what you're saying. You're trying to rectify a problem which has been pointed out to us, but it doesn't go far enough, because while the Niagara Escarpment is now slated to become part of the



study area, it is not subject to the same restrictions on development extended to the other areas in the study area and the retroactive clause suspending decisions and applications for development in matters before the OMB or at a consolidated hearing to December 16, 2003. It doesn't apply to matters pertaining to the Niagara Escarpment. Just so people are aware, the bill will suspend decisions on applications for urban development in the NEA on the day the legislation receives royal assent.

What we have here is the other areas receiving close to a year's protection from development while the escarpment receives half that. I think this half measure doesn't cut it. As you know, there's a reason why we needed to include it in the bill.

You haven't said it, but I presume you're concerned about lawsuits. I think that's a chance you have to take with this. I just want to point out that while I've been arguing, because of leapfrog development, that Simcoe and other areas should be included in this, the answer to me was, "Well, just because they're not included doesn't mean that later, after the other process is being developed, some of that land won't be frozen." In the same way, I could suggest there might be lawsuits there as well. The question is, where do you draw the line? I believe in terms of protecting the Niagara Escarpment, giving them the same protection is really critical. I think you're just doing the opposite of what you need to be doing here.

Have you been told specifically why? You say you don't think it's fair, but a lot of people are saying that what you've done in designating certain lands for the greenbelt is not fair. But is it more than being not fair? Is there a stronger explanation as to why you haven't given it that retroactivity?

**Mrs Van Bommel:** I think simply because we did not give notice with the first reading to this area.

**Ms Churley:** But you're saying, I think, that it was an error, an oversight. It's not their fault and now they're suffering the consequences of that. Whether it was an oversight or, at the time, whatever happened, it's just really important that they be given that full protection. Any other comments on that?

**Mrs Van Bommel:** Not really, no.

**Ms Churley:** OK.

**Mr Ouellette:** Does this motion essentially supersede the Niagara Escarpment act? Is that what you're saying with this, or are those areas subject to the Niagara Escarpment act? For those who know the Niagara Escarpment act, it's far more onerous than the legislation put here. My concern is that this legislation we're going to put in place will allow a lot of loopholes in the Niagara Escarpment. I'd rather see the Niagara Escarpment act invoked in that area than this legislation. Committees and everything else—having been the minister responsible for that area, I can assure you that the NEA is far more onerous than anything taking place here.

**Ms Churley:** I know I'm not being asked, but yes, it's—do you want to answer?

**Mrs Van Bommel:** No, you go right ahead. Otherwise, I'll ask the staff anyway.

**Ms Churley:** You might want to answer that. It's not my responsibility.

**The Chair:** Will the staff answer that one?

**Ms Churley:** If not, I can do it, but—

**Ms Barbara Konyi:** Mr Ouellette, what's proposed in the motions is to allow a change—and it's motion number 18 that we haven't got to yet. It changes schedule 2 of the act to include certain lands within the Niagara Escarpment plan area to be subject to the moratorium. So it would be those areas that would be subject to urban-type uses.

**Mr Ouellette:** So what you're saying, then, is that the legislation in the Municipal Act is going to supersede the legislation found in the Ministry of Natural Resources in regard to the Niagara Escarpment?

**Ms Konyi:** No.

**Mr Ouellette:** What is going to be the function of the commission that reviews every single application and every building permit that comes up?

**Ms Konyi:** The Niagara Escarpment Commission reviews the areas under development control. The entirety of the Niagara Escarpment plan area is not under development control. There are certain land use designations that regular Planning Act processes continue. It's the more rural portions of the escarpment and the Niagara Escarpment protection areas that are subject to the development control areas. We're not touching those areas through the moratorium.

**Ms Churley:** Can I point out something, if you don't mind, that might be helpful? We received on March 24, 2004, a very succinct explanation from Ontario Nature. I believe that's who it's from. They point out the problem, and so did the commissioner and some of the others involved. I'm just going to read this directly, because it explains it:

"The act provides for an open-ended amendment process. Using this process, applications may be made to expand designation in the NEP, allowing urban growth as part of the urban, minor urban and recreation areas. These"—and we all know this—"amendments are generally very contentious and can strike at the heart of the NEP's purpose," which is set out in section 2 of the NEPDA, "to provide for the maintenance," and then they explain the purpose. What they're saying here is that in order to prevent the piecemeal erosion and chipping away of the escarpment ecosystem, the NEP, as a key greenbelt anchor, should be afforded the same protection under the urban development as it is in the Oak Ridges moraine plan.

Here's the nub of the problem: The Oak Ridges moraine, which your government, the Conservative government, brought in, gave it more protection than, believe it or not, the Niagara Escarpment act at this point. So under the Oak Ridges Moraine Protection Act, there are to be no urban boundary expansions considered until the ORMPPA is reviewed, which only occurs every 10 years.

The difference is that you can't have all these under the Niagara Escarpment act. You can have these

piecemeal. They're coming all the time. Castle Glen is one that I've been bringing up as a particular one, but there are others, and what they're saying is they want this to be included and therefore to have the same protection as the Oak Ridges moraine act. Although it's a strong act, it's not as strong in terms of the protection under the Oak Ridges moraine.

**Mr Ouellette:** I certainly think this organization may be of that perspective, but knowing the Niagara Escarpment Commission, the individuals on there and the hard work they do, I think there's going to be conflict as a result of this for any of the reviews they do in the appeal process, that they are subject to in any developments or anything that takes place in those areas. I can see that this is going to cause the commission as well as the act—there are going to be conflicts between the two that I don't think are going to be resolved with this motion.

**The Chair:** Is that satisfactory?

1640

**Mr Hudak:** This is just a quick question to the parliamentary assistant or to staff. Did this come from a particular delegation to the committee, or a letter, or is this just something that the ministry discovered and thought it would be best to amend? If I understand the origin, it helps me with my decision and with my colleague's points.

**Ms Konyi:** The origin of these proposed motions?

**Mr Hudak:** I was wondering if it was part of the oversight that the ministry has done in working with other ministries or did a particular deputation bring this point forward?

**Ms Konyi:** It was a combination, Mr Hudak, including within the provincial government. We worked with the Ministry of Natural Resources. There are others that made deputations, as Ms Churley noted, that reinforced the same need to propose these sorts of changes. The Oak Ridges moraine conservation plan—Ms Churley is correct—cannot be amended until a 10-year review. Any individual can make an application to amend the Niagara Escarpment plan. Those sorts of things led to the desire to put these motions forward.

**The Chair:** Is that satisfactory? Any more questions or comments? If not, those in favour of the government amendment? Against? The amendment is carried.

Those in favour of section 3, as amended? Against? The amendment is carried. Section 3, as amended, is carried.

Motion 6, a government motion.

**Mr Delaney:** I move that clause 4(1)(c) of the bill be struck out and the following substituted:

"(c) approve a plan of subdivision under section 51 of the Planning Act."

**The Chair:** Could we get a brief explanation of this, please?

**Mrs Van Bommel:** This is a technical—

**The Chair:** Just technical.

**Ms Churley:** But I need to understand what it means. I don't want to spend a lot of time on this, but what I see

in these particular amendments—you say "it's technical," but there are some more loopholes being created. They may be small and certainly there are some cases where there need to be some. Am I on the right track here? Is this what's going on with this?

**Ms Konyi:** No. I'm not sure. I shouldn't say whether you are on the right or wrong track.

**Ms Churley:** Maybe the best thing to do is for you to explain it.

**Ms Konyi:** Can I explain it to you?

**Ms Churley:** Yes.

**Ms Konyi:** This truly is a technical amendment. If I refer you back to the bill itself, the wording in the bill basically talked to the restrictions on the powers of municipalities. In this case it was some of the things that they could do now. When we talked about some of the matters that wouldn't affect long-term greenbelt protection but were far along in the approvals process, this is one instance where that was the case. The wording in the first reading bill said that you could approve a draft plan or approve a final plan of subdivision under section 51 of the Planning Act, so this was one that we, as staff, put forward as just a cleaner way of saying it. Instead of saying both "a draft plan" and "a final plan," we just said you could deal with a plan of subdivision.

**Ms Churley:** Yes, I was confused about that. You're right. In the original bill, under 4(1)(c) municipalities were not permitted to approve draft and final plans for subdivisions.

**Ms Konyi:** This is one of the ones I spoke about at previous meetings where the minister had asked the Greenbelt Task Force to give some advice on those situations where you could provide relief. This was one of the types of scenarios.

**Ms Churley:** I see. I just want to be clear on this. The amended version—OK, I think I understand.

**The Chair:** Other questions or comments? If none, those in favour of the motion? Against? None against. The motion is carried.

The next motion is number 7, section 4. It's a government motion.

**Mr Delaney:** I move that section 4 of the bill be amended by adding the following subsection:

"Exceptions

"(1.1) Subsection (1) does not prevent a municipality from,

"(a) removing a holding symbol under section 36 of the Planning Act;

"(b) passing a bylaw under section 34 of the Planning Act in order to satisfy a condition of an approval granted under section 51 or a consent granted under section 53 of the Planning Act before December 16, 2003;

"(c) approving the extension of a temporary use under subsection 39(3) of the Planning Act; or

"(d) approving a final plan of subdivision under subsection 51(58) of the Planning Act."

**The Chair:** Questions or comments?

**Ms Churley:** If somebody could explain.

**The Chair:** A brief explanation, please.



**Ms Churley:** I think this is the small loophole one, isn't it?

**Ms Konyi:** I'll ask the lawyer to explain this one.

**The Chair:** Can anybody give us a brief explanation on this?

**Ms Suzanne Graves:** Yes, Ms Churley, this motion is—

**The Chair:** Could you state your name, please?

**Ms Graves:** Suzanne Graves. I'm from the Ministry of Municipal Affairs and Housing.

As Ms Konyi mentioned, this motion is one of the motions proposed to respond to the recommendations of the Greenbelt Task Force to allow things that are very far along in the process to proceed. You'll see the reference to approving a final plan of subdivision under subsection 51(58). So if something is very far along and almost at the point that it is approved, the Greenbelt Task Force advice was that it was appropriate to let it through.

**Ms Churley:** That was my impression of it, but it just sounds like it's freeing up things in the small stuff. Is there any way that it could go beyond that in the wording? As the lawyer looking at this, in terms of—

**Ms Graves:** In terms of the wording of the final plan of subdivision?

**Ms Churley:** Yes.

**Ms Graves:** I would think not, because if you remember the motion previously, motion number 6, it refers to "approve a plan of subdivision." So that's one of the prohibitions. The only exemption to that would be approving a final plan of subdivision under 51(58).

**Ms Churley:** I see. Thanks.

**Ms Graves:** The only other matter is the extension of a temporary use. That's a use that's already permitted and that would simply be an extension of the temporary use under (1.1)(c).

**Ms Churley:** What would that be?

**Ms Graves:** That might be, for example, for a fall fair or something that's already authorized as a temporary use under the act.

**Ms Churley:** So we are talking about things like home renovations, minor construction projects, holding symbols.

**Ms Graves:** Moving a holding symbol, yes.

**Ms Churley:** That's a barns and buggy sheds amendment? Is that fair to say? All those smaller things that got caught in this.

**Ms Graves:** I couldn't say for certain everything that would be permitted by this, but these are basically for things that are either already approved and they're extended for temporary approval or things that are very far along in the process.

**Ms Churley:** Would it also, though, catch the concerns expressed about some of the smaller things that may not be in the process? I said barns and buggy sheds. Would it catch some of those?

**Ms Graves:** Minor variances are not caught by the act as it stands now.

**Ms Churley:** All right. So would you consider building a new barn a minor variance? Would that catch this or not?

**Ms Graves:** It would depend on what type of planning approval was required. It would depend on the circumstances, what the existing zoning is. I couldn't say for sure.

**Ms Churley:** Thanks.

**The Chair:** Mr Hudak?

**Mr Hudak:** I'm fine, Chair.

**The Chair:** Any more questions or comments? If none, those in favour of motion number 7? Against? It is carried.

Shall section 4, as amended, carry?

1650

**Mr Hudak:** Recorded vote.

### Ayes

Arthurs, Delaney, Dhillon, Parsons, Rinaldi, Van Bommel.

### Nays

Hudak, Ouellette.

**The Chair:** The motion is carried, as amended.

**Clerk of the Committee (Ms Tonia Grannum):** The section is carried.

**The Chair:** Did I say motion? I have to start it again.

Shall section 4, as amended, carry? Carried.

Clause 5(1)(d) is a government motion, motion number 8. Oh, we have 7.1; I'm sorry. We don't have it on the list.

**Mr Hudak:** No problem.

**The Chair:** It's a PC motion. Now that we have taken a vote, I need unanimous consent to go back to section 4. All in favour, so we can go back to section 4? I'm sorry; we didn't have it on the list there.

**Mr Hudak:** No problem. Great.

**The Chair:** It is section 4.4.

**Mr Hudak:** Thank you, Chair, and thank you, members, for giving unanimous consent.

I move that section 4 of the bill be amended by adding the following subsection:

"4.4 Notwithstanding anything to the contrary in this act, this act does not apply to prevent a municipality that has commenced a study prior to December 16, 2003, which study contemplates an alteration to all or part of the boundary of an existing urban settlement area, or the establishment of a new urban settlement area, from completing and implementing the results of such study.

**The Chair:** A brief explanation, Mr Hudak.

**Mr Hudak:** In the spirit of previous amendments for municipal relief projects that are already well down the line, we heard from a number of municipalities that have said they have done considerable work on projects, Richmond Hill specifically; I think Hamilton had also sent in a letter of a similar nature. Another deputation by Ira Kagan of Kagen Shastri mentioned three projects that had been far along in the process, specifically Bawden-Wood, Mizrahi and Richmond Greenhouses.

Since these projects are well down the line and they've gone through processes—I don't think these processes are prejudiced in any way—I think this respects the roles of municipalities and we should listen to their advice. I hope members will support my amendment.

**The Chair:** Further questions or comments?

**Mr Wayne Arthurs (Pickering-Ajax-Uxbridge):** I'm going to move an amendment to that amendment by deleting the word "implementing" and inserting the words, "seeking planning approvals consistent with."

If I could, the word "implementing" implies a certain end result as a given. The amendment to the amendment would identify that municipalities and municipal partners who have initiated growth management studies by the municipality can seek planning approvals consistent with the results of the studies once the studies are complete.

**The Chair:** Any other questions or comments on the amendment to the amendment?

**Mr Hudak:** I'll bow to my colleague's experience in municipal politics. It seems like a sensible amendment to my amendment and I would be supportive of such.

**The Chair:** Other questions or comments on the amendment to the amendment? If not, we will vote on the amendment to the amendment first.

**Mr Hudak:** Recorded vote.

#### Ayes

Arthurs, Hudak, Ouellette.

#### Nays

Churley, Dhillon, Parsons, Rinaldi, Van Bommel.

**The Chair:** The amendment to the amendment is defeated.

We will now move to PC motion 7.1.

**Mr Hudak:** I'd just thank my colleague from Pickering. We had three votes on that one. We're on the move. I appreciate his advice to improve the amendment. Since that failed, I still move my original amendment and thank him for his advice.

**The Chair:** Any other questions or comments? Those in favour?

**Mr Hudak:** Recorded vote.

#### Ayes

Hudak, Ouellette.

#### Nays

Arthurs, Churley, Dhillon, Parsons, Rinaldi, Van Bommel.

**The Chair:** The amendment is defeated. This is motion 7.1.

Now I will move on. Shall section 4, as amended, carry?

**Ms Churley:** Recorded, please.

**The Chair:** Recorded vote.

#### Ayes

Arthurs, Dhillon, Parsons, Rinaldi, Van Bommel.

#### Nays

Churley, Hudak, Ouellette.

**The Chair:** Section 4, as amended, is carried.

Now we'll move on to section 5. It's motion 8, clause 5(1)(d), a government motion.

**Mr Lou Rinaldi (Northumberland):** I move that clause 5(1)(d) of the bill be amended by adding "to permit urban uses" at the end.

**The Chair:** Can we get some explanation for this motion? Is there anybody on the government side who could explain the purpose of the amendment?

**Mrs Van Bommel:** This is another housekeeping amendment that will make sure that zoning orders are treated the same as any other application.

**Ms Churley:** I'm sorry. I didn't hear you.

**Mrs Van Bommel:** This is a housekeeping amendment to make sure that zoning order applications are treated the same as any other application.

**The Chair:** Any other questions or comments? If none, those in favour of the motion? Against?

Shall section 5, as amended, carry?

*Interjection.*

**The Chair:** A recorded vote.

#### Ayes

Arthurs, Delaney, Dhillon, Parsons, Rinaldi, Van Bommel.

#### Nays

Churley, Hudak, Ouellette.

**The Chair:** Motion 9: It's a government motion, section 5.1.

**Mr Ernie Parsons (Prince Edward-Hastings):** I move that the bill be amended by adding the following section:

"Restriction re: applications or requests to amend the Niagara Escarpment plan

"5.1(1) No person shall make an application or request to amend the Niagara Escarpment plan under section 6.1 of the Niagara Escarpment Planning and Development Act if the application or request relates to land that is within the land use designation of escarpment natural area, escarpment protection area or escarpment rural area of the Niagara Escarpment plan and the application or request seeks to,



“(a) redesignate the land to the land use designation of minor urban centre, urban area or escarpment recreation area of the Niagara Escarpment plan; or

“(b) make any other amendment to permit urban uses.

“Effect of contravention

“(2) Any application or request purported to be made that contravenes subsection (1) is of no effect.”

**The Chair:** Any additional explanation?

**Mrs Van Bommel:** This again is in response to concerns that were expressed to the standing committee on behalf of the Niagara Escarpment.

**Ms Churley:** I understand that these are all connected, and I have 6.1. There is another amendment that you have, and I have one as well that's all connected to this. The problem, as I see it, with this one is the same as the previous one. I wanted to ask a question, though, a technical question. Coming up in 6.1, I have an amendment that deals with the Niagara Escarpment, and then there's a government one coming right after this. Section 6.1 is referred to in this particular amendment. If this one passes, would it rule my 6.1 out of order? I think it's 6.1. Let me check. Yes.

**Clerk of the Committee:** Your page 11.

**Ms Churley:** Yes, and then the government has a 6.1 as well, following mine, on 11 and 12. I just need to have clarification. I don't think it would, but it's not my strength, trying to figure out the wording of these amendments from time to time. I think it's 11 and 12.

**The Chair:** Yes.

**Ms Churley:** Page 11 is my amendment, 6.1, with three parts. Page 12 is the government's amendment, 6.1.

**The Chair:** Yes. But right now we're dealing with section 5.1.

**Ms Churley:** I know, but maybe you didn't hear me. What I'm asking is, because this amendment talks about section 6.1 under—no, because that's 6.1 of the Niagara Escarpment Planning and Development Act. A different 6.1? I'm confused. I just want this cleared up.

1700

**Ms Lucinda Mifsud:** You're both talking about the same section, but yours does different things, so it might not fit perfectly with your amendment. Right now, of course, it would fit the government amendment.

**Ms Churley:** All I want to know is, further on, mine won't be ruled out of order if this passes—because the government members are voting for everything of theirs.

*Interjection.*

**Ms Churley:** I was trying to think of a polite way to say it because I like these people, but they've been told how to vote. They're voting party line.

**The Chair:** Yours won't be out of order.

**Ms Churley:** OK. That's all I need to know. Fine.

**Mr Arthurs:** Is this something new that just started?

**Ms Churley:** You guys were going to be different, remember?

Coming back to this one, my problem is the same, as I said, as the previous one: The Niagara Escarpment area receives half the protection, compared to the others.

That's a problem. I don't need to go into detail about it again, but that's my problem with it.

**The Chair:** Any other questions or comments?

If none, those in favour of motion 9, section 5.1? Against? The motion is carried.

The next one is 9.1, a PC motion. I would have to call this one out of order, because all you had to do was vote against the other one.

**Mr Hudak:** I just wanted to make a statement.

**The Chair:** You could vote against the whole section.

**Mr Hudak:** Certainly, with two hands.

We haven't voted on section 5 yet. Do you need section 5?

**The Chair:** Section 6. It's government motion 10.

**Ms Churley:** Oh, you're ruled out of order. That's right.

**The Chair:** Yes. Yours was ruled out of order because all you had to do was vote against the section.

**Mrs Van Bommel:** Did we vote on section 5?

**Clerk of the Committee:** No. We dealt with section 5. There was a new 5.1. Now we go on to section 6.

**Mrs Van Bommel:** I just wanted to be sure. Thank you for the clarification.

**The Chair:** We don't need to vote on that one.

Section 6: The first one is a government motion, page 10.

**Mr Delaney:** I move that section 6 of the bill be amended by adding the following subsection:

“Exceptions

“(1.1) Subsection (1) does not apply to,

“(a) the approval of a final plan of subdivision under subsection 51(58) of the Planning Act;

“(b) the application for the removal of a holding symbol under subsection 36(3) of the Planning Act;

“(c) the approval of the extension of a temporary use under subsection 39(3) of the Planning Act; or

“(d) the passing of a by-law under section 34 of the Planning Act in order to satisfy a condition of an approval granted under section 51 or a consent granted under section 53 of the Planning Act before December 16, 2003.”

**The Chair:** Questions or comments?

**Mr Hudak:** Explanation?

**Mrs Van Bommel:** This again goes back to the issue of applications that are in the advanced stages and they wouldn't stay if they ended up before the OMB. This is just again to try and to sure that we try to avoid—or reduce the number of future exemption applications.

**Ms Churley:** How is it different from the previous one?

**Ms Konyi:** This complements motion 7. Motion 7 dealt with the prohibitions on the municipalities. This one deals with the matters that are before the OMB.

**Ms Churley:** I see. So it has the same impact of the—

**Ms Konyi:** It does exactly the same thing.

**The Chair:** Any other questions or comments? If none, in favour of the motion? Against?

Carried.

Shall section 6, as amended, carry?

**Mr Hudak:** Debate on section 6?

**The Chair:** Sure.

**Mr Hudak:** Thank you, Chair. I appreciate your advice on the original motion, with respect to section 6 as a whole. I've made similar arguments on my proposed amendments to section 4 about the retroactivity. I appreciate the government has made some moves here to give some, as they call it, municipal relief to allow some projects or lessen the burden down the road, if those projects were considerably advanced.

Nonetheless, I think we've expressed time and time again in the House a concern about retroactivity in general and about changing the laws of processes that are well in place, without evidence that the proceedings were prejudiced. Therefore, we'll be voting against section 6.

**The Chair:** Any other questions or comments? If none—

**Mr Hudak:** Recorded vote.

**The Chair:** Shall section 6, as amended, carry?

#### Ayes

Arthurs, Delaney, Dhillon, Parsons, Rinaldi, Van Bommel.

#### Nays

Hudak.

**The Chair:** The motion is carried.

Section 6.1, motion 11. It's an NDP motion.

**Ms Churley:** I move that the bill be amended by adding the following section:

"Restriction

"6.1(1) Despite section 6.1 of the Niagara Escarpment Planning and Development Act, no amendment to the Niagara Escarpment plan may be initiated by the minister or by the commission and no application may be made to the commission by any person, ministry or municipality requesting an amendment to the plan under that section if the effect of the amendment would be to establish or expand an urban area, minor urban area or escarpment recreation area designation.

"Limited application

"(2) Subsection (1) ceases to apply when the first review after the coming into force of this act has been completed under section 17 of the Niagara Escarpment Planning and Development Act and the report on the review has been approved and confirmed by the Lieutenant Governor in Council under subsection 17(4) of the Niagara Escarpment Planning and Development Act.

"Override of repeal provision

"(3) Despite section 15, this section is repealed on the day that the report has been approved and confirmed as described in subsection (2)."

**The Chair:** Could you give a further explanation?

**Ms Churley:** Yes, I can. This amendment is attempting to amend the Niagara Escarpment Planning and Development Act so that it provides the same level of

protection to the escarpment as the Oak Ridges Moraine Conservation Act provides the Oak Ridges moraine. What it will do is see that applications to amend the plan can only be put forth when the plan is reviewed.

The other thing the amendment does is that it will still be in effect after this bill sunsets, so it's actually excluded from the sunset clause.

Sorry about that. I was just seeing if my staff was correcting me on something here. They always know better. That's Jasmyn Singh, by the way, my assistant, who's been very helpful bringing me notes all the time.

This does what I referred to previously. The problem with this bill, when it comes to the Niagara Escarpment is, first of all, it's being completely left out. As has been related earlier, it should have the same protection that the Conservative government gave the Oak Ridges moraine, and they don't have it. What I'm attempting to do here in this amendment is give them that protection, but also to expand that protection.

I know this is a comprehensive amendment, and it goes beyond what this bill is doing in terms of a temporary freeze on the lands while the study is being done. But the reason I'm including it in this amendment is that we have situations already happening—and I've outlined them earlier. Castle Glen is a very good example, but there are others. Castle Glen, of course, is the new town that's going to be built on the Niagara Escarpment for the first time since the 1970s. It's a year-round town with three golf courses, housing.

1710

What I'm doing in this amendment is going beyond the sunset clause so it can bring in the same protections within this bill, which we're able to do within the bill; that is, expand it and have new applications be allowed only after 10 years, which is the way it's set up for the Oak Ridge moraine. The Niagara Escarpment Commission and others are asking that they have that same protection. So it's an opportunity within this bill to build in that protection.

**The Chair:** Any questions or comments? We'll proceed with the vote.

**Ms Churley:** Recorded, please.

#### Ayes

Churley.

#### Nays

Arthurs, Delaney, Dhillon, Hudak, Parsons, Rinaldi, Van Bommel.

**The Chair:** The motion is defeated.

**Ms Churley:** On a point here, just to let people know that I was somewhat prepared for this and I will be presenting a private member's bill tomorrow in the Legislature, since it didn't pass here. I hope that I will have the support. I know you were told to vote against it today by the minister, but I hope you will see fit to support—



**Mr Hudak:** He talked to me. The minister did talk to me. I think you're right. I think the minister is making his calls.

**Ms Churley:** I know I'm right because I know they would love to support this. It obviously makes sense to give them that protection, the same as the Oak Ridge moraine. Since we are not doing it within this bill, it's really important that I'll have your support on the private member's bill which I'll introduce tomorrow.

**The Chair:** Very good pitch, but it's out of order.

**Ms Churley:** I just thought I'd let people know.

**The Chair:** Motion 12, a government motion, section 6.1

**Mr Delaney:** I move that the bill be amended by adding the following section:

"Applications to amend Niagara Escarpment Plan stayed

"6.1(1) All applications or requests to amend the Niagara Escarpment plan under section 6.1 of the Niagara Escarpment Planning and Development Act and any hearing before a hearing officer under that Act or a joint board under the Consolidated Hearings Act in relation to such applications or requests shall be deemed to have been stayed on the day this section comes into force if the application or request relates to land that is within the land use designation of escarpment natural area, escarpment protection area or escarpment rural area of the Niagara Escarpment plan and the application or request seeks to,

"(a) redesignate the land to the land use designation of minor urban centre, urban area or escarpment recreation area of the Niagara Escarpment plan; or

"(b) make any other amendment to permit urban uses.

"Same

"(2) Subsection(1) applies to proposed amendments to the Niagara Escarpment plan that were initiated by the Niagara Escarpment Commission or the Minister of Natural Resources."

**The Chair:** Can you explain the purpose of the addition? Sorry. Apparently you jumped a section. Could you reread clause (a)?

**Mr Delaney:** Yes, "(a) redesignate the land to the land use designation of minor urban centre, urban area or escarpment recreation area of the Niagara Escarpment plan; or

"(b) make any other amendment to permit urban uses."

**The Chair:** Very good. Any additional explanation to be given?

**Mrs Van Bommel:** This again is in response to concerns we heard as a standing committee. We are trying to respond to—

**Mr Delaney:** On a point of order, Chair.

**The Chair:** There is one more, a second page.

**Mrs Van Bommel:** Yes, that's right.

**Mr Delaney:** "No action to be taken

"(3) The joint board or hearing officer under the Niagara Escarpment Planning and Development Act shall

not make or issue any order, decision, report or ruling in respect of the matters referred to in subsection(1).

"Effect of contravention

(4) Any order, decision, report or ruling purported to have been made or issued that contravenes subsection (3) is of no effect."

**The Chair:** Thank you, Mr Delaney. Further explanation?

**Mrs Van Bommel:** This is in response to concerns that we heard at the standing committee. Again, it deals with the issue of protection for the Niagara Escarpment, but what we want to do is make sure that this bill is truly a sunset bill, so it mirrors in many ways the issues that the NDP motion brought forward.

**Ms Churley:** I have an amendment to the amendment. Would now be a good time to introduce that?

**The Chair:** Definitely.

**Ms Churley:** I'll introduce it first and then I'll speak to it.

The amendment is very short. I'll read it first and explain it. It reads:

Section 6.1

I move that the government motion to add a new section 6.1 to the bill be amended by adding the following clause to subsection (1):

"(c) allow any development of land by the Castle Glen Development Corporation in the Town of the Blue Mountains."

**The Chair:** Thank you. Could you explain the reason for this addition?

**Ms Churley:** I certainly will. My amendment, of course, failed, which would have had it—previous to this, my 6.1, had it passed, would not make this amendment necessary. So there are two reasons for this.

I'll explain Castle Glen in a second. But again, just so that people are clear about what the government amendment does, it's good for all future applications to build on the escarpment but it doesn't address the immediate threats. I believe there are more immediate threats that some people might support, some more new development proposals that are coming forward, but I see them as possible, very serious threats to the Niagara Escarpment. I understand there are numerous historical or grandparented urban approvals of the escarpment that are very similar to Castle Glen that could be coming and will be coming forward.

Just so people understand why I specifically put Castle Glen in, you have been aware that the Coalition on the Niagara Escarpment wrote to Minister Gerretsen on March 19, 2004, to alert him and his ministry to the concerns about the approval of the Castle Glen project. I raised a question in the Legislature a couple of times and was told that nothing could be done about it because it had already been approved. I raised it in this committee when the minister came to talk to us about the bill, and he said he couldn't discuss it because it was before the OMB. If I may say so, with of course all due respect, he sounded remarkably like the Tory minister before, when we asked these kinds of questions.

**Mr Parsons:** That's terrible, Marilyn.

**Ms Churley:** I know it is, but true, terrible but true: the same answers about not being able to deal with it because it was before the OMB or there was just nothing he could do. Of course, I pointed out to him that there were things he could do, and there are things that you and this committee can do to stop it.

Just so you are aware of how serious this is, I'm going to remind you again that the proposed development would be a year-round urban area; it's not even a seasonal resort area. It's the first new urban area on the escarpment since the provincial development control began on the escarpment in June 1975. It runs according to the Coalition on the Niagara Escarpment, and there's a representative, Mr Rick Smith, whom I've seen here today. He's from Environmental Defence Canada, but both the Coalition on the Niagara Escarpment and Environmental Defence Canada brought these issues forward to the minister and nothing's been done since. What they point out, and what I pointed out in the House, is that this runs completely contrary to the purpose and objectives of the Niagara Escarpment Planning and Development Act and identical purpose and objectives of the Niagara Escarpment plan. They also say, since it is their view that the currently proposed Castle Glen constitutes a new urban area, that it runs contrary to development criterion 242 of the Niagara Escarpment plan. They talk about all the things that will be in this town if it's built. I mentioned earlier—we're looking at three golf courses, shops, business offices, homes, school—it will be a whole new town.

1720

It was grandfathered. It has a long history. The reason they allowed it to go ahead is because it's a historic approval. Nothing was built until now and they're going ahead with the development. It came to a head just as the previous government appointees to the Niagara commission were running out. It was brought to them and they approved it. The new Liberal government has brought in new members. I suspect, had it come before the new members, they wouldn't allow it to go ahead. But as I understand it, they don't feel they are in a position to rescind the decision of the previous commission.

There were some agreements made between the developer and the town. I understand, again, that the town finally caved in or whatever because they didn't want to end up going through the expense of long hearings. Everybody—the commission, the town and the ministry—came to an agreement to allow this to go ahead.

I understand it is before the OMB right now. It shouldn't be there at all. We should stop this in its tracks. This is an opportunity to correct this wrong.

Given that my previous amendment was not accepted, it won't stop the other concerns, other historic and grandfathered developments that may pop up. I think that's a real problem, which is why I'm putting forward my amendment in the form of a private member's bill. But if you at least accepted this amendment to your amend-

ment, we could stop this one particular development from going ahead.

I believe this could turn into the Liberal government Oak Ridges moraine. This is a pretty big deal, to be the government, and no matter what excuses are used, there are things you can do to stop it. This is one way to be the government, to be known—you're trying to paint yourself green here. To not do anything that you can lawfully do to stop this is just going to belie your stated commitment to being environmentally sensitive and a green government—a very serious predicament you're in, to not do something to stop this development on the Niagara Escarpment. It's the first permanent town to be built since the 1970s, when Conservatives were in power and brought this in, and every government since has worked to improve on the Niagara Escarpment in various ways. This will be a major setback.

I'm giving the government an opportunity here to accept this amendment, and then you would do what the minister hasn't done, and that is as a committee use your clout here, as individual private members on this committee, to do the right thing: Go back and tell the minister—

**Mr Parsons:** We will.

**Ms Churley:** Seriously. You will be heroes among the Niagara Escarpment people, who really need to see this stopped. I hope you'll support this amendment.

**Mr Hudak:** Just a quick question.

**The Chair:** On the NDP amendment.

**Mr Hudak:** Oh, yes, exactly. Just a quick question to help guide my vote: What does the local member say about the project?

**Ms Churley:** Is the local member—

**Mr Hudak:** Jim Wilson.

**Ms Churley:** I think he really hasn't given me an opinion, but I think he said to me in a private conversation—I'm trying to remember.

**Mr Parsons:** Private.

**Ms Churley:** Yes. It was a private conversation, a very private conversation. I did have a private conversation with him and I should be careful, but I believe he more or less supports the development—surprise, surprise.

**The Chair:** Any other questions or comments? If none, we will vote on the NDP amendment on government motion number 12.

**Ms Churley:** Recorded, please.

**Ayes**

Churley.

**Nays**

Arthurs, Delaney, Dhillon, Hudak, Parsons, Rinaldi, Van Bommel.

**The Chair:** The amendment is defeated.



Now we will move on to the government motion. Those in favour of government motion number 12, section 6.1? Against? The motion is carried.

Let's move on to section 7. Any debate on section 7?

Shall section 7 carry? Against? Carried.

Section 8.

**Mr Parsons:** I move that subsection 8(1) of the bill be amended by adding the following clauses:

"(d) exempting any request or application under section 22, 34, 36, 37, 38, 39, 47 or 51 of the Planning Act from section 4, 5 or 6 of this act;

"(e) exempting any request or application to amend the Niagara Escarpment plan from section 5.1 or 6.1."

**The Chair:** Any further explanation?

**Mr Hudak:** Requested.

**Mrs Van Bommel:** Again, this is a technical refinement, and it also brings the Niagara Escarpment into the—

**The Chair:** Questions or comments?

**Ms Churley:** You call it "technical," but doesn't it broaden the minister's power to make exemptions?

**Ms Graves:** The effect of the proposed amendment, Ms Churley, is to—(e), you'll see, is a complementary amendment that relates to requests or applications to amend the Niagara Escarpment plan from section 5.1. That is a new section that's been added.

The proposed clause (d) allows the LG in C to make a regulation to exempt any specific request or application from sections 4, 5 or 6 of the act, and those are the sections of the act that impose the moratorium.

**The Chair:** Any other comments or questions?

**Ms Churley:** I jumped ahead of myself here. I'll save my other comments for the next one.

**The Chair:** No more comments or questions? If none, those in favour of motion number 13?

**Mr Hudak:** Recorded vote.

**The Chair:** Recorded vote of subsection 8(1).

### Ayes

Arthurs, Delaney, Dhillon, Parsons, Rinaldi, Van Bommel.

### Nays

Churley, Hudak.

**The Chair:** It is carried.

There's a new one, 13.1. It's a PC motion.

**Mr Hudak:** It's a technical amendment that reads as follows:

I move that section 8 of the bill be struck out and the following substituted:

"8(1) The minister upon the request of the affected municipality shall make regulations,

"(a) changing the boundaries of the greenbelt study area set out in schedule 1;

"(b) changing the areas set out in schedule 2 to which sections 4, 5 and 6 apply;

"(c) exempting any land or any use of land, or any class of uses of land, from section 4, 5 or 6.

"Regulations by minister

"8(2) The minister upon the request of the affected municipality shall make regulations,

"(a) modifying or replacing all or any part of the definitions of 'urban settlement area' and of 'urban uses' in section 1;

"(b) prohibiting site alteration, the cutting or removal of trees or the grading of land in the greenbelt study area;

"(c) setting out transitional rules for such matters as the municipality in conjunction with the minister deems appropriate."

**The Chair:** Mr Hudak, the first section, subsection 8(1), is out of order because we already dealt with that. If you want to deal with subsection 8(2), just move it as subsection 8(2).

**Mr Hudak:** Fair enough, then. I'm sorry I didn't get a chance to put subsection 8(1) on the floor.

Then I'll move a motion to amend subsection 8(2). It would read:

"Regulations by minister

"8(2) The minister upon the request of the affected municipality shall make regulations,

"(a) modifying or replacing all or any part of the definitions of 'urban settlement area' and of 'urban uses' in section 1;

"(b) prohibiting site alteration, the cutting or removal of trees or the grading of land in the greenbelt study area;

"(c) setting out transitional rules for such matters as the municipality in conjunction with the minister deems appropriate."

**The Chair:** Can you give additional information on that?

**Mr Hudak:** On the technical amendment—subsection 8(1) we missed, and we have subsection 8(2). But I think the theme is pretty consistent. This would give greater power to the municipalities that are affected by this area as opposed to the Lieutenant Governor in Council or the minister.

I think as we've heard in debate in this committee as well as with the sister bill, Bill 26, the concern about the significant encroachment upon municipal jurisdiction by the government today. While we've heard a number of platitudes about rewarding municipalities and listening more closely to municipalities and giving them more power, in effect, this bill, in this area, among others, as well as Bill 26, does quite the opposite. Our feeling is, we need to enhance rural municipalities as part of this process. That underlies the motion.

1730

**The Chair:** Any additional questions or information? If none, we will proceed.

**Mr Hudak:** Recorded vote.

**The Chair:** Recorded vote. Those in favour of PC motion number 13.1?

**Ayes**

Hudak.

**Nays**

Arthurs, Churley, Delaney, Dhillon, Parsons, Rinaldi, Van Bommel.

**The Chair:** The amendment is defeated.

Shall section 8, as amended, carry?

**Mr Hudak:** Recorded vote.

**Ayes**

Arthurs, Delaney, Dhillon, Parsons, Rinaldi, Van Bommel.

**Nays**

Churley, Hudak.

**The Chair:** Section 8 is carried, as amended.

Section 9, any debate? If none, shall section 9 carry?

Against? It is carried.

Shall section 10 carry? Against? It is carried.

Shall section 11 carry? Against? It is carried.

Shall section 12 carry? Against? Section 12 is carried.

Section 13, any debate? Shall section 13 carry? Against? Section 13 is carried.

Section 14: motion number 14, NDP motion. Ms Churley?

**Ms Churley:** I move that section 14 of the bill be amended by adding the following subsection:

“(0.1) The Oak Ridges Moraine Conservation Act, 2001 is amended by adding the following section:

“Freeze on certain activities

“4.1 (1) Despite any other provision of this act or any other act, no permission or approval shall be given or granted under the Planning Act or the Environmental Assessment Act in respect of land to which the Oak Ridges moraine conservation plan applies that would have the effect of allowing,

“(a) the creation of a new highway or expansion of an existing highway; or

“(b) the expansion of any sewer or water system beyond existing settlement areas except where required to service existing dwellings in the greenbelt study area.

“Effect of contravention

“(2) Any permission or approval that purports to be given or granted in contravention of subsection (1) on or after the day that the Greenbelt Protection Act, 2001 receives royal assent is of no effect.

“Duration of freeze

“(3) This section is repealed on December 16, 2004.”

**The Chair:** Any additional information to be given?

**Ms Churley:** I think it's self-evident. It's dealing, again, with highways and infrastructure that should be

frozen as well during this period of time. I think you would agree with that and support the amendment.

**The Chair:** Questions or comments?

**Mr Hudak:** Recorded vote.

**The Chair:** Those in favour of the amendment to section 14?

**Ayes**

Churley.

**Nays**

Arthurs, Delaney, Dhillon, Parsons, Rinaldi, Van Bommel.

**The Chair:** The proposed amendment by the NDP is defeated.

I have a new motion which was submitted by the PCs. Mr Hudak, section 14.

**Mr Hudak:** We had a typo in the original motion that was sent to the committee. It's slightly changed, but importantly changed.

I move that section 14, subsection (3) of the bill be struck out.

It's similar to arguments that I've made before. It's not respecting the integrity of the process as it's already underway, and the retroactivity has become too often—consistently—part of this government's legislation.

**The Chair:** Can you give additional information, the reason behind this amendment?

**Mr Hudak:** If members require further information, I guess I could.

**The Chair:** Questions or comments? If no questions or comments—

**Mr Hudak:** Recorded vote, Chair.

**Ayes**

Hudak.

**Nays**

Arthurs, Delaney, Dhillon, Parsons, Rinaldi, Van Bommel.

**The Chair:** The PC motion is defeated.

Shall section 14 carry? It is carried.

Section 15: Any debate? If none, shall section 15 carry? In favour? Against? It is carried.

Section 16: A PC motion, page 14.1.

**Mr Hudak:** I move that section 16 of the bill be struck out and the following substituted:

“Commencement

“16. This act shall not come into force until the minister has approved a plan to compensate municipalities for lost revenue, which they will not be able to recover because their future growth is frozen by the act.”



We heard from a number of municipalities. I think members are probably familiar with some of the arguments made. Whitchurch-Stouffville, the township of Brock and Caledon, among others, had talked about how their municipal plans and their plans for growth will be constrained by this legislation and its successor legislation. I think it's important to recognize that fact, that municipalities could be significantly impacted by constraining growth. It would be a burden on taxpayers if they want to improve their services or make future investments in infrastructure. Therefore, before this act would commence, the minister should come forward with a plan to compensate municipalities for their lost revenue.

**The Chair:** Questions or comments? If none—

**Mr Hudak:** Recorded vote.

**The Chair:** Recorded vote on motion number 14.1, a PC motion.

### Ayes

Hudak.

### Nays

Arthurs, Churley, Delaney, Dhillon, Parsons, Rinaldi, Van Bommel.

**The Chair:** It is defeated.

Section 16: A PC motion, page 14.2.

**Mr Hudak:** I move that section 16 of the bill be struck out and the following substituted:

“Commencement

“To Protect Farmland, You Must Protect the Farmer

“16. This act shall not come into force until the minister has approved a comprehensive plan to ensure that farming continues to be viable and profitable in the greenbelt area.”

This may be a new area of debate for me as part of this committee. If members want further explanation, I'd be willing to do so. But I think it's an important principle that we heard consistently during the hearings and should be enshrined in this legislation.

**The Chair:** Any questions or comments? I see none.

**Mr Hudak:** Recorded vote.

**The Chair:** Recorded vote on motion number 14.2.

### Ayes

Hudak.

### Nays

Arthurs, Delaney, Dhillon, Parsons, Rinaldi, Van Bommel.

**The Chair:** The motion is defeated.

Motion number 15 is a government motion.

**Mr Delaney:** I move that section 16 of the bill be struck out and the following substituted:

“Commencement

“16.(1) Subject to subsection (2), this act shall be deemed to have come into force on December 16, 2003.

“Same

“(2) Sections 5.1 and 6.1 come into force on the day this act receives royal assent.”

**The Chair:** Any explanation?

**Mrs Van Bommel:** This again relates to an earlier motion where we were talking about the inclusion of the Niagara Escarpment plan and the issue of fairness in terms of retroactivity.

**The Chair:** Questions or comments? I see none.

Those in favour of government motion number 15? Against? It is carried.

Shall section 16, as amended, carry? It is carried.

I have a PC motion, number 15.1. It's out of order because there is no section 18.

1740

**Mr Hudak:** Chair, if I could comment. We heard rumours that the government was going to bring in section 18, which was worse than the other sections of the bill. Pre-emptively, we were looking to strike it out.

**The Chair:** So it is out of order.

**Mrs Van Bommel:** Nice try.

**Mr Hudak:** We're always ready. Can we have a vote?

**The Chair:** Not on this one, no.

Section 17: Is there any debate?

**Mr Hudak:** I apologize to members, but I think the proposed motion will be very clear. They don't have one before them. I just thought of it.

I move that section 17 be struck out and be replaced by, “The short title of this act is the Greenbelt and Fruitbelt Protection Act, 2003.”

I'm basically adding, “and Fruitbelt,” after the word “Greenbelt.” So it would be “The short title of this act is the Greenbelt and Fruitbelt Protection Act.”

**The Chair:** Questions or comments? So it is a motion. We will probably call this motion number 16.

Those in favour of this motion brought in by Mr Hudak?

**Mr Hudak:** Recorded vote.

### Ayes

Churley, Hudak.

### Nays

Arthurs, Delaney, Dhillon, Parsons, Rinaldi, Van Bommel.

**The Chair:** The PC motion is defeated.

Shall section 17 carry? Carried.

Now we'll move on to schedule 1, NDP motion 16—new 16.

**Ms Churley:** I move that schedule 1 the bill be amended by striking out paragraphs 7 to 12 and substituting the following:

“7. County of Brant.

“8. County of Dufferin.

“9. Haldimand county.

“10. County of Haliburton.

“11. City of Kawartha Lakes.

“12. County of Northumberland.

“13. County of Peterborough.

“14. County of Simcoe.

“15. County of Wellington.

“16. The regional municipality of Niagara.

“17. The regional municipality of Waterloo.

“18. Those lands located in the area known as Rouge Park located in the greater Toronto area.”

**The Chair:** The reason behind the motion?

**Ms Churley:** This is actually for me the nub of the bill. If the government doesn't support this, then I believe that government members are going to have a hard time explaining to the public why not, because this is the acid test of the government's commitment to curbing urban sprawl.

I've got to tell you, local ratepayers groups out there are begging for help, and this bill doesn't do it. It's been described to me as the wild west out there in some areas outside of the greenbelt area. They're calling on the government to go out there and tame the wild west. The reason I've included all of these is that, as you know, they are part of the original, the central smart growth zone under the Tory government, and they have not been included in the greenbelt.

I've talked about leapfrog development before, and I've talked about Simcoe in particular as an example of where the wild west is in action. I mention Castle Glen again. It should be a provincial park. It's beautiful, on the Niagara Escarpment. You haven't agreed to a solution to that. At least on that one I understand you can blame it on previous governments and things get complicated when it comes from historic problems. But none of these apply to the Simcoe county area or some of the other areas I've included here. It's all on this government's watch. There are no complications from previous governments to do with these.

Because this is the acid test of your commitment to the greenbelt, and the fact that this bill in its current form does not succeed in protecting against urban sprawl in some of Ontario's most environmentally sensitive areas, the committee absolutely has to stand up to the ministers and to the government and say that the scope of the study area has got to be expanded to match the central smart growth zone for it to fulfill its purpose to stop urban sprawl and to protect agricultural and environmentally sensitive areas.

Numerous deputants came forward, on both sides of the issue, interestingly enough. Some of the developers who were not very happy with some of the lands frozen and the conservation, environmental and local ratepayers groups who came forward all had problems with leapfrog development that is happening now, as we speak.

The issue is that there will be many people out there who are generally supportive of the government's move to create a greenbelt, but if this amendment isn't passed and the scope is not expanded, then you will be denounced as bringing forward a bill that's not adequate. For this bill to have any meaning, because of the leapfrog development that's happening and creating, in fact, a bigger problem—because the developers are buying up land, leaping over the frozen land, and that will mean there will be more roads built, more traffic congestion, more smog, more problems. That's what's going on now. So in some ways you will be creating a bigger problem than already exists, if these lands aren't included now. I urge you, because this bill does not do what it purports to do, unless all of these other areas are included in the study area.

**The Chair:** Thank you, Ms Churley. Any other questions or comments? If none, those in favour—

**Ms Churley:** Is it too late? Can I ask the government why—I know we have to hurry up here. Now that it's been pointed out frequently by experts that the greenbelt is not sufficient as it's now proposed, and big problems are coming about as we speak with leapfrog development, why are you not including those lands?

**Mrs Van Bommel:** The Ministry for Public Infrastructure Renewal is also doing a growth management initiative as we speak, and I'm satisfied they will take in those things in those areas. So I don't feel those areas are necessarily being ignored here.

**Ms Churley:** I know you don't feel that way, but, in fact, we have evidence they are, because they're not included in the freeze. It's happening now. The developers are buying up the land now. There are all kinds of lists of these hot spots that I mentioned. I could go into more detail, if there were more time, about some of the development that's already in the hopper on those lands that can be very detrimental to your plan to provide a greenbelt. So unfortunately—I know you feel it's going to be taken care of; it isn't. The evidence has been presented to this committee. There are all kinds of newspaper articles about it that suggest you're wrong in your feeling. You're absolutely wrong. It is happening as we speak. So if we don't include those lands, it's going to cause a great many problems down the road. It's already happening. The only way, given what's happening right now, to prevent that is to include it in the freeze right now.

The other thing I pointed out earlier is you're saying on one hand you're not including it in the greenbelt right now, but who knows what's going to happen down the road? Those developers are already out there buying up the land and planning. I think it's fair if there is some plan in the future to do something about it, to let them know in advance. As I said, they're buying up the land and the pressures are going to be there. Because my amendments were not accepted to stop certain highway and infrastructure construction, there is going to be even more pressure on the government to build there. You're creating a huge problem here.



Again, I think you're going to lose your credibility in presenting this to the public as you being a green government trying to preserve land. It just completely belies your purported commitment to a green Ontario.

1750

**Mr Hudak:** I think Ms Churley makes the case well in her description of the problem that exists and has been caused by Bill 27. She and I have different remedies for that. I think the approach the Smart Growth panels were taking—I think Minister Caplan's approach is probably more consistent with the process that was previously underway. I have said repeatedly that I think this committee should be a comprehensive approach to solving this problem. I think the greenbelt tool on its own is not an effective growth management tool and is lacking.

Secondly, I don't know if there is any geographic reason behind it; there's certainly not any science that links all of the areas of the greenbelt. They're not, like the escarpment or the Oak Ridges moraine, consistent in the nature of geography and plant and animal life.

To answer Ms Churley, I think it was simply a campaign commitment that was made, "Here's the area we're going to address," without looking at the bigger picture.

I'm not going to support Ms Churley's amendment, but I do want to congratulate her for putting the problem correctly; I just have a different solution for it. Maybe the government can—we've asked them that question before, so I'll leave it at that. But I appreciate the pointing out of the problem by Ms Churley.

**The Chair:** Other questions or comments? If none, all in favour of the NDP motion on page 16?

**Ms Churley:** Recorded vote.

**Ayes**

Churley.

**Nays**

Arthurs, Delaney, Dhillon, Hudak, Parsons, Rinaldi, Van Bommel.

**The Chair:** It is defeated.

Shall schedule 1 carry? In favour? Against? It is carried.

Schedule 2, paragraph 1, NDP motion on page 17.

**Ms Churley:** I move that schedule 2 of the bill be amended by striking out paragraph 1, because we want to bring the Niagara Escarpment in. It shouldn't be exempt.

**The Chair:** Any questions or comments? If none, those in favour of NDP motion number 17?

**Ms Churley:** Recorded, please.

**Ayes**

Churley.

**Nays**

Arthurs, Delaney, Dhillon, Parsons, Rinaldi, Van Bommel.

**The Chair:** The motion is defeated.

Motion number 18, a government motion.

**Mr Parsons:** I move that schedule 2 to the bill be amended by striking out paragraph 1 and substituting the following:

"1. Land covered by the Niagara Escarpment plan approved under the Niagara Escarpment Planning and Development Act that has any land use designation other than escarpment natural area, escarpment protection area or escarpment rural area of the Niagara Escarpment plan."

**The Chair:** Further explanation?

**Mrs Van Bommel:** This again imposes a moratorium on the Planning Act, the applications and hearings, under sections 4, 5 and 6.

**The Chair:** Questions or comments?

**Ms Churley:** Just briefly. It's a net improvement, but, again, it doesn't go far enough, as I understand. It doesn't protect recreation. What exactly does it do and not do? It's my understanding that it doesn't protect recreation.

**Ms Konyi:** What it does is it complements the changes that were made in the act to the new sections 5.1 and 6.1 to the same changes that would be under the Niagara Escarpment plan. So it does the same thing in terms of not allowing any expansion of urban uses on to what are the rural lands in the Niagara Escarpment plan, but it does it with respect to the Planning Act applications on those same areas. It mirrors the other motions we had put forward.

**Ms Churley:** Which don't go far enough. OK. Thank you.

**The Chair:** Any other questions or comments? If none, those in favour of motion number 18? It's a government motion. Against? None. So it is carried.

Shall schedule 2, as amended, carry? Against? It is carried.

The preamble: It's a PC motion.

**Mr Hudak:** Since I don't recall being successful on the earlier motions as to the body of the bill, perhaps we can get at least some recognition in principle in the preamble of some of the issues that have been brought forward. The first motion deals with agriculture.

I move that the preamble to Bill 27 be amended by adding the following preambular paragraphs:

"The government of Ontario recognizes the historical contribution of the agricultural community to the culture, well-being and economy of the Golden Horseshoe area.

"The government of Ontario recognizes the importance of the economic viability and the protection of the farmland in the Golden Horseshoe area.

"The government of Ontario recognizes the importance of good planning for the economic viability of aggregate resource development."

I think it's important, in setting the tone for what the bill is about, that these amendments occur to the preamble. We certainly heard support from a number of groups like the Niagara North Federation of Agriculture; Art Smith, from the Ontario Fruit and Vegetable Grower's Association; the Aggregate Producers' Asso-

ciation of Ontario; municipal councillor Austin Kirkby from Niagara-on-the-Lake, who I think would support this change to recognize those important resources, their history and the importance of maintaining their economic viability in the greenbelt area.

**The Chair:** Are there questions or comments? I see none.

In favour of the PC motion?

**Mr Hudak:** Recorded vote.

**Ayes**

Hudak.

**Nays**

Arthurs, Delaney, Dhillon, Parsons, Rinaldi, Van Bommel.

**The Chair:** It is defeated.

The preamble: PC motion 20.

**Mr Hudak:** My last shot. I move that the preamble to Bill 27 be amended by adding the following preambular paragraph:

"The government of Ontario recognizes the economic importance to the Golden Horseshoe area of building a mid-peninsula corridor."

I appreciate the answers from the Ministry of Transportation staff. I'm worried that steps have been taken back on this. I think this will help shift some of the pressures from the fruit belt area to other parts of the province, specifically the southwestern part of the peninsula, Haldimand county and other areas. I think it fits with the goals of the government to relieve pressure on those areas, and hope they will add this to the preamble, at the very least.

**The Chair:** Any questions or comments? I see none. Those in favour of PC motion number 20?

**Mr Hudak:** Recorded vote.

**Ayes**

Hudak.

**Nays**

Arthurs, Delaney, Dhillon, Parsons, Rinaldi, Van Bommel.

**The Chair:** The motion is defeated.

Shall the preamble carry? Against? I see one. It is carried.

Now the title: Shall the title of the bill carry? In favour? It is carried.

Shall Bill 27, as amended, carry?

**Mr Hudak:** Recorded vote.

**Ayes**

Arthurs, Delaney, Dhillon, Parsons, Rinaldi, Van Bommel.

**Nays**

Churley, Hudak.

**The Chair:** Shall I report the bill, as amended, to the House? In favour? Against? It is carried. So I will be reporting the bill to the House.

This completes clause-by-clause. I want to thank everyone for their good co-operation. I had scheduled June 28 and June 30 for the next two clause-by-clause, but we won't have to do it. Thanks again.

*The committee adjourned at 1758.*



## CONTENTS

Wednesday 9 June 2004

**Greenbelt Protection Act, 2004, Bill 27, *Mr Gerretsen* / *Loi de 2004 sur la protection de la ceinture de verdure*, projet de loi 27, *M. Gerretsen*..... G-437**

### STANDING COMMITTEE ON GENERAL GOVERNMENT

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#### Substitutions / Membres remplaçants

Mr Tim Hudak (Erie-Lincoln PC)

Mrs Maria Van Bommel (Lambton-Kent-Middlesex L)

#### Also taking part / Autres participants et participantes

Ms Barbara Konyi, manager, planning systems, Ministry of Municipal Affairs and Housing

Mr John MacKenzie, special assistant, planning, Ministry of Municipal Affairs and Housing

Ms Suzanne Graves, legal counsel, Ministry of Municipal Affairs and Housing

Mr Bruce McCuaig, assistant deputy minister, policy, planning and standards division, Ministry of Transportation

#### Clerk / Greffière

Ms Tonia Grannum

#### Staff / Personnel

Ms Lucinda Mifsud, legislative counsel



G-19

G-19

ISSN 1180-5218

**Legislative Assembly  
of Ontario**

First Session, 38<sup>th</sup> Parliament

**Assemblée législative  
de l'Ontario**

Première session, 38<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

Monday 21 June 2004

**Journal  
des débats  
(Hansard)**

Lundi 21 juin 2004

**Standing committee on  
general government**

Organization

**Comité permanent des  
affaires gouvernementales**

Organisation

Chair: Jean-Marc Lalonde  
Clerk: Tonia Grannum

Président : Jean-Marc Lalonde  
Greffière : Tonia Grannum





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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 21 June 2004

Lundi 21 juin 2004

*The committee met at 1555 in room 151.*

## ELECTION OF CHAIR

**Clerk Pro Tem of the Committee (Ms Susan Sourial):** I'd like to call this meeting to order. Honourable members, it's my duty to call upon you to elect a Chair.

**Mr Jerry J. Ouellette (Oshawa):** I would like to nominate Jean-Marc Lalonde.

**Clerk Pro Tem of the Committee:** Mr Ouellette has nominated Mr Lalonde. Any further nominations? Seeing none, I declare nominations closed and Mr Lalonde elected as Chair.

## ELECTION OF VICE-CHAIR

**The Chair (Mr Jean-Marc Lalonde):** Thank you, Mr Ouellette, and thank you, everyone, for the confidence. I'm told we are going to have a pretty good month of August coming.

Now we need a nomination for Vice-Chair.

**Mr Shafiq Qaadri (Etobicoke North):** Mr Chair, with your permission, I'd like to nominate Mr Vic Dhillon for Vice-Chair.

**The Chair:** Vic Dhillon has been nominated by Shafiq Qaadri. Any other nominations? Mr Dhillon is absent, but he had shown interest in continuing as Vice-Chair, so I declare Mr Dhillon Vice-Chair of the standing committee on general government.

## APPOINTMENT OF SUBCOMMITTEE

**The Chair:** The next item we have on the agenda is the motion to appoint a subcommittee on committee business.

**Ms Deborah Matthews (London North Centre):** I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at the request of any member thereof, to consider and report to the committee on the business of the committee; and that the subcommittee be composed

of the following members: the Chair as Chair—Mr Ouellette, Ms Churley and Mr Rinaldi; and that the presence of all members of the subcommittee is necessary to constitute a meeting.

**The Chair:** Any other nominations for the subcommittee? If none, shall the motion carry? Carried. Thank you.

Any other business?

**Mr Ouellette:** Mr Chair, first of all I'd like to congratulate you. I know you'll make an excellent Chair, as you've demonstrated in the past. However, you briefly mentioned sitting through the summer. Maybe you can enlighten us on something that you may or may not believe is in our future.

**The Chair:** Yes, I'd like to clarify that. Apparently, we will be getting Bill 26 and will have to travel during the month of August. The announcement should be made in the House by the end of the week. If it is called in the House by the end of the week, I will call the subcommittee, probably Thursday afternoon at 3:30 or have a conference call next Tuesday when Tonia comes back. Which would you prefer?

**Mr Lou Rinaldi (Northumberland):** Which one is Bill 26?

**The Chair:** That's the Municipal Act. We're looking at August and probably September. But before we do anything, I think it would be good to have a discussion among the subcommittee, and then the subcommittee could ask the members of the committee before we go ahead with the dates. Do we all agree on this? We'll wait and see what is going to happen this week in the House concerning the possibility of visiting different communities during the month of August.

**Mr Ouellette:** Mr Chair, I would move that we leave it up to the Chair—first to determine how it's brought forward in the House and that the Chair determine when the subcommittee should meet.

**The Chair:** Very good. Thank you.

Are there any other things to discuss? If none, I declare the meeting adjourned.

*The committee adjourned at 1600.*



## CONTENTS

Monday 21 June 2004

<b>Election of Chair</b> .....	G-459
<b>Election of Vice-Chair</b> .....	G-459
<b>Appointment of Subcommittee</b> .....	G-459

### STANDING COMMITTEE ON GENERAL GOVERNMENT

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Mr Lou Rinaldi (Northumberland L)

Mr John Yakabuski (Renfrew-Nipissing-Pembroke PC)

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Mr Kevin Daniel Flynn (Oakville L)

#### **Clerk pro tem / Greffière par intérim**

Ms Susan Sourial

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Ms Lorraine Luski, research officer,  
Research and Information Services



G-20

G-20

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## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 20 September 2004

# Journal des débats (Hansard)

Lundi 20 septembre 2004

## Standing committee on general government

Strong Communities  
(Planning Amendment) Act, 2003

## Comité permanent des affaires gouvernementales

Loi de 2003 sur le renforcement  
des collectivités (modification  
de la loi sur l'aménagement  
du territoire)



Chair: Jean-Marc Lalonde  
Clerk: Tonia Grannum

Président : Jean-Marc Lalonde  
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## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 20 September 2004

Lundi 20 septembre 2004

*The committee met at 0903 in room 151.*

## SUBCOMMITTEE REPORT

**The Chair (Mr Jean-Marc Lalonde):** Could we take our seats, please? It being 9:04, I just want to try to be on time for most of the presenters who are going to be here. The last presenter will be at 6 o'clock tonight. Don't forget that we have an hour for lunch—

*Interjection.*

**The Chair:** Oh, it has been changed to 5 o'clock. Did you get the new agenda? OK.

Before we start with the minister, I'm going to ask Lou Rinaldi to report on subcommittee business.

**Mr Lou Rinaldi (Northumberland):** Your subcommittee met on Friday, July 23, 2004, to consider the methods of proceeding on Bill 26, An Act to amend the Planning Act, and recommends the following:

1. That the committee meet for the purpose of public hearings on Bill 26 on September 20, 21, 22 and 23, 2004.

2. That the committee meet in Toronto September 20, 2004, from 9 am to 5 pm, and that the committee meet in Kapuskasing, London and Ottawa on September 21, 22 and 23, 2004, from 10 am to 5 pm. Times and locations are subject to change and based on witness response and travel logistics.

3. That the committee seek permission from the House leaders to meet an extra day in Toronto on September 27, 2004, from 9 am to 5 pm, should witness response warrant.

4. That an advertisement be placed for one day in the English dailies, the one French daily, and also in the French weeklies affecting the surrounding areas where the committee intends to meet, and the advertisement be placed on the ONT.PARL channel and the Legislative Assembly Web site.

5. That the deadline for those who wish to make an oral presentation on Bill 26 be 4 pm on September 14, 2004.

6. That the clerk provide the subcommittee members with the list of witnesses who have requested to appear by 5 pm on September 14, 2004, and that the caucuses provide the clerk with a prioritized list of witnesses to be scheduled by 11 am on September 15, 2004.

7. That organizations and individuals be allotted 15 minutes in which to make their presentations.

8. That the Minister of Municipal Affairs and Housing be invited to make a half-hour presentation before the committee the morning of September 20, 2004, followed by a half-hour technical briefing by the ministry staff.

9. That opposition critics be allotted 10 minutes each to respond to the minister's and ministry staff's briefing on September 20, 2004.

10. That the research officer provide the committee with a summary of witness presentations, prior to clause-by-clause consideration of the bill.

11. That the deadline for written submissions on Bill 26 be 5 pm on September 24, 2004.

12. That amendments to Bill 26 should be received by the clerk of the committee by 4 pm on September 27, 2004.

13. That the committee meet for the purpose of clause-by-clause consideration of Bill 26 on September 29 and 30, 2004, in Toronto.

14. That the clerk of the committee, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

**The Chair:** Are there any questions or comments?

If none, all those in favour of the subcommittee report? Carried.

STRONG COMMUNITIES  
(PLANNING AMENDMENT) ACT, 2003  
LOI DE 2003 SUR LE RENFORCEMENT  
DES COLLECTIVITÉS (MODIFICATION  
DE LA LOI SUR L'AMÉNAGEMENT  
DU TERRITOIRE)

Consideration of Bill 26, An Act to amend the Planning Act / Projet de loi 26, Loi modifiant la Loi sur l'aménagement du territoire.

MINISTRY OF MUNICIPAL AFFAIRS  
AND HOUSING

**The Chair:** Now I would ask the Minister of Municipal Affairs and Housing, the Honourable John Gerretsen—welcome to the committee. I think your presentation will be quite important, because I think it's one



of the most important bills that we could have for the future of our municipalities.

Minister, you have 30 minutes, and then we will proceed with the ministry technical staff.

**Hon John Gerretsen (Minister of Municipal Affairs and Housing, minister responsible for seniors):** Good morning, everyone. Let me, first of all, say how pleased I am to be here this morning and also say how important the committee work of the Legislative Assembly is. I always enjoyed working on these committees for the last eight years, and I certainly hope that I will enjoy this morning as much as I did in the past, sitting on the other side. But it's nice to see everyone here. Of course, I've seen my caucus members a number of times this summer, but it's also nice to see the members of the opposition here to discuss this particular bill.

It's my understanding, Mr Chairman, and you could correct me if I'm wrong, but following my statement I'd be more than pleased to answer any questions at that point in time. I understand that the opposition and the third party will be making their 10-minute statements before the technical briefing. That was my understanding, anyway.

**The Chair:** That is the way we are going to proceed. I'm sorry about the fact that you have to leave. We know that you have a really busy schedule, so after your presentation, we'll move on to the official opposition critics.

0910

**Hon Mr Gerretsen:** Never too busy to lay out this good piece of legislation before the committee and to discuss it in a very positive fashion, Mr Chairman.

I'm happy to join you here today in a discussion of Bill 26, the proposed Strong Communities (Planning Amendment) Act, 2003.

The strong communities act, 2003, is proposing fundamental reforms to the land use planning system that will shape how our communities grow and prosper. Effective land use planning is one of our commitments to the people of Ontario. It's a key element of our long-term strategic approach to effective and efficient use of the province's land, water and food resources.

Over the next 30 years, four million new residents will call Ontario home. The question is, are we prepared to provide the enhanced, vital services, including affordable housing, efficient transit, safe water and a clean environment, expected of a province like Ontario? The government is setting a course for building strong, safe and livable communities in our province that offer residents a high quality of life. Our approach for attracting healthy and sustainable growth will be clear, consistent and responsive to Ontario's priorities. This will require making decisions that will lead to long-term benefits.

We are working toward promoting economic growth, or livable communities, enhanced transportation choices, clean and safe water and better protection for our environment. The land use planning system is of key importance in achieving these goals in Ontario. Land use planning establishes the rules for development and helps to determine how our communities grow. Ontario's land

use planning system defines the interests and responsibilities of all Ontarians in planning for future land uses.

Our municipalities are confronting, as we know, many challenges. Among these are increasing gridlock as a result of urban sprawl; unprecedented growth pressures, such as in the Golden Horseshoe area; loss of prime agricultural land and other resources; the need for enhanced environmental protection; and the need for a strong economy. It is also clear that Ontario's communities and the public need to have an effective voice in land use planning. Municipalities must also have the right tools to achieve good land use planning. As a first step in planning reform, I introduced Bill 26, the Strong Communities (Planning Amendment) Act, in December of last year. Bill 26 will amend the Planning Act and provide an enhanced framework for planning in Ontario. If passed, the act would be the first step in building the foundation for strong, safe and livable communities.

Here's how this proposed legislation will achieve this goal. First, Bill 26 will give the citizens of our communities a stronger voice to shape how their communities should grow and prosper. For the public, they would have more opportunity to contribute to decisions on development proposed for their communities. The public has told us their concerns for cleaner air and water, communities that are safe and cities and towns that work for the people who live in them. The people's concerns are our concerns, and their input will be vital as we move toward more effective land use planning.

For municipalities, the bill would mean more time to review planning applications, especially changes to official plans. For example, the time frame to consider amendments to official plans and applications for approvals of subdivisions would double to 180 days from the current 90 days, zoning applications would increase to 120 days from 90 days, and applications to sever property would increase to 90 days from 60 days. We recognize that dealing with official plan amendments and subdivision and condominium matters are usually more complex than zoning bylaw amendments and consent-to-sever applications. If passed, Bill 26 would give municipalities more time to review the proposals and negotiate solutions to issues that may arise with respect to the proposals.

Second, Bill 26 would strengthen the municipality's authority to act on local matters before they can be appealed to the Ontario Municipal Board. Bill 26 would allow municipalities to determine their urban development boundaries, not the Ontario Municipal Board. As well, an applicant's right of appeal to the OMB would be eliminated for alterations to urban settlement area boundaries or the establishment of new urban settlement areas which are not supported by municipal councils. Elected officials and the public will have a choice in the way their communities grow and prosper.

Third, the proposed legislation would change the implementation standard to "shall be consistent with" provincial policy statements issued under the act. We want to ensure that land use decisions are "consistent



with" the province's priorities for environmental protection and community growth. This is a change from the current "have regard to" standard that currently allows decision-makers to overlook key matters of provincial interest and creates ambiguity for communities and the Ontario Municipal Board.

Lastly, planning reform would give the province the option to exercise authority on significant matters that affect provincial interests. It would provide the province with the authority to confirm, vary or rescind an OMB decision if it adversely affects a declared provincial interest regarding official plans and zoning.

In summary, the Strong Communities Act (Planning Amendment), 2003, would put more planning power in the hands of communities and would put the public interest first. Our government introduced the act because effective governments manage growth instead of being managed by it. We introduced this bill because we believe in local democracy and putting the public interest first. Our government introduced this bill to support other government priorities, including the proposed Greenbelt Protection Act, the growth management strategy, source water protection, the Greater Toronto Transportation Authority and waste management. All these priorities are linked to one another and support our commitment for well-planned, managed growth.

This government is giving our democratically elected local officials the planning authority that rightfully belongs to them. Our government recognizes that more needs to be done in reforming key aspects of the planning system. That is why the past three months were spent in consultation with stakeholders and the public on the various components of planning reform. Ministry of Municipal Affairs and Housing staff consulted with the public on whether further changes needed to be made to the Planning Act and to Bill 26; the need for implementation tools to help support and implement a strong and effective land use planning framework in Ontario; proposed revisions to the provincial policy statement, which provides policy direction on land use planning; and the need for reforms to the Ontario Municipal Board. This gives us the opportunity to review the land use planning system to ensure that it meets today's needs.

I want to remind you that we are not rebuilding the system from scratch. We know there are many parts of the current land use planning process that work. Our goal is to make improvements to the parts that simply do not work.

The strength of Ontario depends on the strength of its communities. We are committed to delivering real, positive change to build stronger and better communities. We believe that the proposed Strong Communities (Planning Amendment) Act, 2003, is a step in this direction.

That being so, it would be ill-advised to look at Bill 26 in isolation. Proposed changes to the Planning Act, as embodied in Bill 26, would also have an impact on the provincial policy statement and would change the Ontario Municipal Board's role in the planning process. I will explain very briefly why Bill 26, the provincial

policy statement and the Ontario Municipal Board are linked.

As I've already mentioned, Bill 26 would amend the Planning Act and provide an enhanced framework for planning in Ontario.

The provincial policy statement, or the PPS for short, sets out the province's policies on land use planning, the government's priorities, as well as the direction we all want Ontario to take. It is the complementary policy document to the Planning Act that embodies good planning principles and seeks to protect the public interest. The PPS is reviewed every five years to determine whether revisions are needed, based on its effectiveness and its ability to address emerging issues that are of potential provincial interest.

#### 0920

The Ontario Municipal Board is an independent adjudicative body that plays a key role in resolving planning disputes. It provides a forum where members of the public, landowners and others can appeal planning decisions. It hears appeals of municipal decisions and appeals where no decisions have been made on planning applications within the timelines set out in the Planning Act.

We have consulted on the board's role in the planning process to ensure it is consistent with improvements to the system as a whole. The result of the consultation of the last three months will give us guidance in the direction we should take to ensure an effective and more efficient land use planning system.

Mr Chairman and members of the committee, it's time for well-managed plan growth. We cannot wait for population growth and uncontrolled development to overwhelm Ontario's resources. We have to manage growth in a planned and intelligent way, and we have a responsibility to oversee this growth. The people of Ontario want well-planned, responsible, managed growth and the tools to administer land use planning conscientiously over the long term.

Smart land use planning is vital to well-planned, safe, livable communities. We all want an Ontario where communities are vibrant, with plenty of green space, jobs, and diverse and prosperous neighbourhoods, but this demands strong, imaginative leadership and collaboration among all levels of government, and legislation on which to build the foundation for change.

Well-planned growth requires input from the people who live in our communities, so we know if their needs are being met and if our policies on land use planning are working. Well-planned growth also requires commitment. This government is committed to delivering the real, positive change that will make a difference in the way we live and work in Ontario.

The Strong Communities (Planning Amendment) Act, 2004, is the first step to real, positive change for those Ontario communities, and our government's vision of strong communities includes sustainable government services and appropriate municipal tools. It means infrastructure support and the protection of provincial interests.



Strong communities also mean more collaboration between the province and municipalities, and greater accountability for local governments. I believe the people of Ontario deserve nothing less. By strengthening the communities in which we live, we are providing the people of Ontario with a quality of life that is second to none.

**The Chair:** Merci, monsieur le ministre. Thank you.

Now I will pass on to the official opposition.

**Mrs Julia Munro (York North):** I certainly want to thank you, Minister, for coming here this morning to give us a picture of the bill as you see it.

I guess we all understand that historically the Ontario Municipal Board has existed to hear planning issues and disputes between municipalities and citizens, whether it's those defending the status quo or, in fact, seeking to change it. I think we all appreciate the kind of contribution the Ontario Municipal Board has made over the years to provide that, but recognize that there has developed criticism over the years that the board, somehow, sometimes appeared to favour one position over the other. I guess that's the context in which your government had chosen to make the kinds of changes you are providing for us in Bill 26.

I remember too that the Liberal platform last year promised a new era of transparency, accountability and empowerment for municipalities in bringing forward these changes. However, I think that when we look at certain aspects of this bill, there are some fundamental contradictions to those laudable goals that were espoused during the election. So I'm going to make most of my comments specifically with regard to the power of the minister.

You have mentioned briefly the fact that there is a new section that would deal with the power of the minister, and I see it as two particular parts. The first is obviously the power to declare a provincial interest, and second, with that power to declare comes the power in the minister himself or herself to inject into the process. It's around those two features that I think there are a number of concerns.

Let me share with you some of those concerns. I guess the first one deals with the definition of a provincial interest, which lies then, according to the bill, within the power of the minister. In subsection 17(52), the minister "is not required to give notice or to hold a hearing"—in other words, give reasons for his involvement in the process.

We're also left to draw the conclusion that nothing guides the minister in defining a provincial interest. There's no stated obligation to, using words quoted elsewhere, "be consistent with" or "have regard for" provincial policy statements. In short, there is no accountability in this particular part of the bill.

The second part of the power of the minister is contained in subsection 17(53), wherein the power of the OMB—and, I think, important for all of us, recognizing that by association we're talking about the power of municipalities—is to all intents and purposes eliminated by a decision that may be made at the cabinet table.

The minister has always had significant powers under the Planning Act, whether as a party to the Ontario Municipal Board hearing or approval authority under subsections 17(6) and (12) of the Planning Act. However, the changes put before us in Bill 26 dramatically alter the position of the minister and the cabinet. These changes take decision-making from the OMB, where, as a quasi-judicial body, transparency has always been a hallmark. These changes effectively ignore the public process that precedes the OMB hearing. That public process has been designed to give all parties their fair share: a voice to be heard, ideas to be debated and decisions to be made. So much for empowerment of municipalities.

The third Liberal promise was accountability. The new powers ascribed to the minister are protected from accountability. There is no requirement for reasons for a declaration of provincial interest. There is no requirement for consistency with provincial policy statements. There is no requirement for a hearing. In other words, a trip to the minister's office eliminates all those pesky formalities.

As you can see from these brief comments, accountability, transparency and empowerment for municipalities may have sounded good last year, but today we have a bill before us that takes us in the opposite direction. This is particularly worrisome for all citizens as we face huge challenges in planning decisions for the future of our province. I would certainly want to make mention of the fact that the minister, I think, has been very clear to us about those kinds of challenges. We are looking at four million people in the next 30 years. We certainly recognize the pressures of growth and the kinds of complexities that represents. But I think one of the responses by this government has been to hastily introduce Bill 27, a time out in setting the moratorium for the lands around the Golden Horseshoe. More recently, the Places to Grow discussion document appeared.

0930

Clearly this government recognizes the importance of planning decisions. However, this bill gives cold comfort to anyone seeking transparency, accountability and empowerment, and this comes just at a time when it would seem to us to be most necessary. Instead, the government is poised to usher in a new era of the opposite. Planning will be done by a political process, a process that is closed, a process that doesn't have to hear evidence, a process that doesn't have to judge credibility of witnesses, a process that doesn't have to provide reasons for its decisions. Most people want fairness, a process they can follow and understand. Instead, they're going to see the trail to the cabinet table.

**The Chair:** Thank you, Mrs Munro. It's good to see you back.

**Mrs Munro:** Thank you.

**The Chair:** I'll move on to the third party. Ms Churley, you have 10 minutes.

**Ms Marilyn Churley (Toronto-Danforth):** The minister looked anxious to be able to respond to those accusations.



**Hon Mr Gerretsen:** Do I get an opportunity to respond, Mr Chairman?

**The Chair:** You might get two minutes at the end.

**Ms Churley:** The first thing I'd like to say is that before the last election, the Liberals, as I understand, were going to abolish the OMB. I wonder what happened to that. Do you remember that?

**Hon Mr Gerretsen:** No, I don't.

**Ms Churley:** Yes. I think it was Mike Colle.

**Hon Mr Gerretsen:** Some individual candidates may have said that—

**Ms Churley:** Some individuals made quite a point of saying it was—

**Hon Mr Gerretsen:** —but I don't think it was party policy.

**Ms Churley:** But it was said quite frequently by prominent Liberal members.

Listen, we're glad that the Liberals have seen the light here and are bringing back many of the Planning Act amendments in the new act—Minister, you weren't here then—brought in by the NDP in the early 1990s. This is a little bit like fashion. You know how every now and then fashion from previous times makes a comeback? Well, the concepts from the early 1990s are making a comeback here today in terms of land use planning, and I think that's a good thing. In particular, the whole concept around rulings by the OMB and other government agencies being consistent with government's planning policy statements is really important.

This is something the NDP brought in. John Sewell, Toby Vigod and others went across the province and consulted broadly. It came in under budget too, and John was very proud of that. I suppose there were some compromises on both sides overall, but basically people were pretty happy with that legislation. Then the Tories came in and threw it all out, and I remember sitting in this committee room having a major fight over—and maybe it sounds like semantics to some people—the concept of “be consistent with” rather than “have regard for” as absolutely key. We're really glad to see you're bringing that back, because obviously what we were seeing was that the OMB and others could look at it and say, “OK, we regarded that,” and throw it aside and carry on. But this is key in that it makes very clear again that it has to be consistent with provincial policy.

Having said that, I don't think we know what the provincial policy statement is going to be under the Liberals because it's still under review and in consultation, but I assume it's going to be a strong statement. I do want to say that some of the things that have happened previously under the Liberal government—as the minister and members here are well aware, I've kicked up quite a fuss, publicly as well as privately, over the decisions. I'll name a few in particular: the decision to approve the big pipe, which is something that will drive sprawl into the heart of the greenbelt itself, and then the Oak Ridges moraine. Seeing that that was allowed to go ahead was extremely alarming in the context of this act and many other acts, such as source water protection and growth and other acts

that the government is working on. As you know, Minister, there's already a declining supply of prime agricultural land, and this, in many people's view, including mine, threatens the headwaters that feed the Humber River and eventually Lake Ontario. I have to speak up on this, because those sources have an impact on Toronto's drinking water.

I am going to try to leave you a couple of minutes to respond to some of these things because they are of great concern.

Very recently, another issue I raised is that perhaps one government arm is not talking to the other. The government attempted to repeal the bylaw restricting industrial livestock operations near Lake Huron. What was said, I believe by the Minister of Agriculture at the time, was that they were repealing it on the basis that it goes against the provincial policy statement. So there was a contradiction there. We have grave concerns, as do the people in the Lake Huron area and other areas of Ontario, that these large factory farms impact their environment, their water, and have other possibly dire environmental consequences. The municipality said no, based on many of these things, to a large pig farm, and the province has been attempting to appeal and overturn that decision.

Those are the kinds of things I hope this act would actually fix. If it doesn't and if it's geared to one particular piece, then it isn't going to work. That is one of the questions I have for you: Would the growth management plan, obviously the source water protection, nutrient management, all those things, be looked at in the context of the provincial policy statement so that all the arms of government, when it comes to protecting prime agricultural land and the environment, are included under this policy statement?

The other question I have for you is around the areas of provincial interest and how you define that. Have you decided yet how that would be defined? Will there be an explicit list of what constitutes a matter of provincial interest? That would be necessary for the interests of transparency. Let me give you some examples. During the greenbelt hearings, the greenbelt group brought forward 10 hot spots as matters in which it should be considered that the province has an interest, and some of them are before the OMB right now: for instance, Castle Glen on the Niagara Escarpment, and you'll remember I raised that with you; Pickering; the Duffins-Rouge agricultural preserve in Simcoe county—that's before the OMB—and many others. I would like to know if those 10 hot spots that have been identified would come under perhaps provincial interest.

I have a final question—although there's not a lot of time and I do want your response—of I guess the key ones from me. Ms Munro has been raising the cabinet powers being given in this bill. Would the cabinet also be covered by provincial policy, ie, have to be consistent with government planning policy? I think that would be key. It's a double-edged sword, because there are times, especially depending on the makeup of the OMB, when it could be important for a municipality and local



environmental groups etc to have that option, but it can work the other way as well. If you're going to have that process there, there's got to be a really good reason for it and it's got to be clear and consistent. The kinds of concerns raised by the official opposition I think are well said, and I would need to know that those protections are there for the cabinet as well. I'd like to understand a little better why you would give the cabinet those kinds of powers and what kinds of checks and balances would be put in place.

I hope there are a few minutes left so the minister can respond to some of those concerns.

0940

**The Chair:** Thank you, Ms Churley. I have 10 minutes left, Minister, so you should have enough time, probably.

**Ms Churley:** I didn't mean to give him 10 minutes.

**Hon Mr Gerretsen:** Would you like to continue on?

Where to start on this? There have been an awful lot of good issues raised and concerns expressed by both members. Let me say to Ms Munro, it's nice to see her back here after her absence from this place for some time.

Let me first of all say, with respect to the Ontario Municipal Board, yes, some individual members may have recommended the abolition of the Ontario Municipal Board. We are somewhat unique in the province of Ontario as far as the Canadian setting is concerned. Not every province has an organization like the Ontario Municipal Board. I think that, by and large, it has always provided and stood us in good regard in this province. But the Ontario Municipal Board can only play by the rules which it's given, and it's our feeling that the rules have to be changed to some extent, whereby municipalities basically determine where their urban settlement areas within their urban boundaries are going to be. I think that's probably the most significant change that I see in the long run, as far as this particular bill is concerned. Most of the other aspects of the bill deal more with the questions of timing and process as to how quickly matters can come before the Ontario Municipal Board and how much time a municipality should be allowed in order to make changes to its official plan, zoning bylaws, approved subdivisions, condominiums and things like that.

We are currently looking at the Ontario Municipal Board Act to see what kind of changes should be made in that regard as well. Hopefully, those proposed changes will be coming forward within the next number of months as well.

As far as the provincial policy statement is concerned, it is out for consultation right now as well. It has been available to the public for at least the last month and a half, if not two months, for comment. We've received some excellent comments. I will be the first to admit to you that, at times, there may be an inconsistency between looking at the provincial policy statement, which, after all, is the government's view as to how the province as a whole should be developed, and empowering local mu-

nicipalities by giving them the power as to what should be in official plans and zoning bylaws—but basically official plans. Some people might see that there sometimes is a conflict. The province may have this point of view as to how the province should be developed, particularly in the long range, when you see there are four million more people coming to the province of Ontario, and the local municipalities might see it slightly differently as to how they are going to be involved in that overall provincial policy debate. That will be the creative tension, in my opinion, that will always exist between provincial objectives and local objectives. When all is said and done, we as a province, as a government, have the responsibility to make sure that the overall province is properly planned for the next number of years. To that extent, local desires, local initiatives, will have to come within the confines of the new provincial policy statement.

We're looking for comments from the public at large, from interest groups, from different political points of view etc. Ultimately, once we have determined what those comments are, we will be coming out with a provincial policy statement, hopefully at the same time as we deal with the Ontario Municipal Board review, and hopefully at the same time as Bill 26 goes through the process.

I think it's very important that the growth plan, which is basically under the direction of Minister Caplan as the Minister of Public Infrastructure Renewal, and the Greenbelt Protection Act, which comes within the jurisdiction of the Minister of Municipal Affairs and Housing, that those two initiatives are, first of all, in sync with one another, that they jibe with one another, and also jibe with the overall objectives of the provincial policy statement. That's why it's so crucial that all of these three initiatives take place at the same time and that there's a lot of public debate. With respect to the greenbelt initiatives, I know the Greenbelt Task Force made some excellent recommendations as to what principles should guide and govern the greenbelt protection area. It's very important that those three initiatives go hand in hand and be dealt with at the same time.

With respect to the 10 hot spots that Ms Churley mentioned, all I can say is that, as you know, some of these are before the Ontario Municipal Board so I'd rather not make any particular comment. It remains to be seen, obviously, how they are going to be dealt with by either the government or the Ontario Municipal Board, whatever the case may be.

The other thing that we should keep in mind is that section 2 of the Planning Act already outlines the areas of provincial concern. It talks about economic development, energy and water, and it specifically mentions that it is supplemented by the provincial policy statement. So I think these all work in conjunction with one another.

My final comment—and I'd be more than pleased to answer any other questions if I've forgotten anything—deals with the issue that Ms Munro mentioned with respect to subsections 17(52) and (53). All I can say is



that we are bringing the system back into line with the way it was prior to the changes that were made by the previous government in which, in our opinion, the Ontario Municipal Board was given too much power. So the power of the minister and the power of cabinet will basically be in line with the way it existed before 1996 or 1997.

I might also note that during all those times when those particular provisions of the Planning Act were in effect, it's my understanding that there were only four times that there were previous declarations of provincial interest pursuant to this particular section in the Planning Act. I'll enumerate them for you, just so there's no misunderstanding: In 1984, it dealt with a Thunder Bay airport situation; in 1989, with respect to the Etobicoke motel strip; in 1994, with respect to the Rouge Park; and also in 1994, with respect to the Metro Toronto Convention Centre expansion. There were four times when this power was used, so it hasn't been, in my opinion, abused in the past and I, for one, certainly don't intend to abuse this in the future. That's really about all I want to say at this stage.

**The Chair:** Thank you, Minister. We have approximately two minutes left. I'm going to go Mrs Munro or Mr Yakabuski.

**Mr John Yakabuski (Renfrew-Nipissing-Pembroke):** Thank you, Minister, for joining us today.

First, I just wanted to comment on something that a member from the third party said about the Sewell report. Perhaps it came under budget because they forgot to travel outside of Toronto when they did the report. I recall that report. It called for the banning of all private septic systems. Then, when those people had to go up and travel to those cottages in rural Ontario, they realized that they had some real problems. So it wasn't quite the wonderful report that the member from the third party thought.

Anyway, getting back to Bill 26, we all want well-planned growth. That's why the previous government came up with the Smart Growth committee. We know that, with the number of people we're going to expect as part of the growth in Ontario over the next several years, we have to deal with those numbers. The real problem I have with this bill—and you've touched on it, but how do we address it? You've got the municipalities, which you promised in the election campaign that you were going to give more power and more autonomy over their growth and planning. To me, this bill does exactly the opposite.

0950

The other thing is a declared provincial interest. Does this come before? It seems to me that municipalities can invest a great deal of time, money and resources in dealing with a planning situation only to have the feet pulled out from under it at the 11th hour by the minister. That would certainly, in my opinion, be counter-productive to the affairs of municipalities and the work they do.

Is there some process by which the government is going to have to declare what provincial interests are so

that municipalities have something to go by? It would seem like we're putting the cart before the horse. They really don't have many guidelines, as I see, as to how they should be proceeding in everything they do. If it is well-lobbied by one side of the equation or the other, it could come down to a ministerial decision. So is planning going to be just a provincial responsibility and the minister is going to plan for the growth of Ontario, or are we actually interested in how municipalities choose to develop their own areas?

**Hon Mr Gerretsen:** All I can say is that this particular section has only been used four times in the past. When you look at the thousands upon thousands of applications that are out there, particularly over a 30- or 40-year period of time, obviously any government, whether it's our government or any other government, would only use this power in the most drastic of circumstances. I would suggest that that has been the experience of the past and undoubtedly that will be the experience of the future.

Although I can understand that there may be some concerns about that, I think that this bill, by and large, gives municipalities much greater powers back by, in effect, allowing them to decide where their urban boundaries are going to be. I think that's much more appropriate for an elected council that is accountable to its citizens, that is elected every three years. It's much more important for them to have that power rather than the Ontario Municipal Board, which is currently the case.

**Ms Churley:** You may be getting a visit from Mr John Sewell after that statement.

For the record, that committee travelled far and wide throughout Ontario and worked very hard to get rural and municipal voices clear across the province heard. In fact, it listened very closely to people, and the end result turned into very good legislation—which, I should add, the Liberals voted against as well back then. But we passed it. It was unfortunate that it was repealed. I am happy to see that the particular component “be consistent with” is back, because that was the backbone of that piece of legislation. Without that, you can make all the great policy statements in the world, but if not everybody is adhering to it, it's not worth the piece of paper it's written on. That's what we've found over the past several years.

Minister, one of the questions that you didn't answer—and perhaps you could be a bit more specific. You said that you're not going to be the minister forever.

**Hon Mr Gerretsen:** Do you know something I don't?

**Ms Churley:** Governments come and go. I should congratulate the Tories for electing their new leader today, Mr Tory. That's why it's so important that we understand the definition of what kind of rules the cabinet will abide under, should something be appealed to cabinet or be declared a provincial interest. I would ask you the question: Would it as well have to abide by the same rules as the OMB and all of the other bodies, and that is, all the decisions be consistent with?

**Hon Mr Gerretsen:** Certainly, in sort of a general way, you would expect any cabinet to adhere to its own



provincial policy statement. As to what may happen in any one particular case, who knows what other interests may come forward? But as a general rule, there's no question about it: The government of the day should stand by its own provincial policy statement because it, after all, put that forward.

**Ms Churley:** Just very quickly, the other questions I raised were around other ministries; for instance, the Minister of Agriculture, the Minister of Transportation. There are often, as you well know, conflicts between the ministries. Will they be included in the policies of those ministries so what's happening with, for instance, appealing a municipality's decision to stop a big hog farm—it has just been isolated out of good planning. They say that, because it's part of their policies to allow these big farms to go ahead, they can override the municipality in making its own decisions on those things.

**Hon Mr Gerretsen:** One of the processes this government has set up is a nine-minister committee that basically deals with all of the land use issues around not only our ministry but nine other ministries as well, and these issues relating to growth and greenbelt protection etc are being discussed on an ongoing basis. It's my understanding that it's the first time it has ever been attempted at that scale. It has worked extremely well so far. It's obviously my hope that all government ministries adhere to the provincial policy statement. That's really about all I can say about that at this stage.

**The Chair:** Minister, I thank you very much for taking the time. It's a very important piece of legislation, and it is for the future of our communities.

**Hon Mr Gerretsen:** Thank you very much for your kind attention and for the thoughtful questions that were posed today. I wish you well in your deliberations and I look forward to your report.

**The Chair:** Our next group is the technical staff from the Ministry of Municipal Affairs and Housing. Can you introduce yourself, sir, please?

**Mr Ken Petersen:** Yes, I'm Ken Petersen, a manager in the provincial planning and environmental services branch in the Ministry of Municipal Affairs and Housing.

**The Chair:** We have exactly 30 minutes, of which you can either take the whole time or leave some time for question period at the end.

**Mr Petersen:** Good morning, Mr Chairman and members of the committee. I'm here to provide a technical briefing on Bill 26. To begin with, I'll provide an overview of the binder in front of you that you received.

To begin with, in tab one, there's a copy of Bill 26, the bill that we're dealing with today, the Strong Communities (Planning Amendment) Act. In tab two is the compendium, which provides an overview of the bill in plain language. In tab three is a copy of the Planning Act, which is the act that is being potentially impacted by Bill 26. In tab four is Hansard, including the debates in the Legislature for December 15, 2003, and May 4, May 12, May 13 and June 1, 2004. Tab five includes the press releases and backgrounders related to Bill 26. In tab six you will find the planning reform consultation press

releases and backgrounders, as well as consultation papers related to the broader planning reform initiative, which the minister spoke about earlier.

If there are no questions with respect to the actual binder, I can move to the slide deck that everybody has. If we go to page two, I'm going to cover the following areas in this briefing. First, I'll provide an introduction to Bill 26 and some context for it. Then I'll provide an outline of some other initiatives that are related to the bill. This will be followed by an overview of land use planning in Ontario, then a summary of Bill 26, including an overview of why the government has initiated Bill 26, a summary of the proposed reforms and an explanation of transitional matters. Finally, I'll provide an overview of the consultation that has taken place with respect to Bill 26 and the broader planning reform initiative.

#### 1000

Moving on to page 3, the government has indicated that it is committed to building strong, livable and healthy communities in order to provide for a higher quality of life, a clean and healthy environment, and a vibrant economy. Bill 26 was initiated by the government to support these commitments by, among other things, allowing more time for municipal and public scrutiny of planning matters while providing stronger direction to decision-makers through a stronger standard for implementing provincial policies.

Moving on to page 4, Bill 26 is part of the government's planning reform initiative. The various components of the planning reform initiative include Bill 26. They also include potential additional reforms to the Planning Act, a review of the provincial policy statement, consideration of new or revised land use planning implementation tools, and Ontario Municipal Board reform.

Moving on to page 5, Bill 26, as part of the government's planning reform initiative, otherwise known as Places to Grow, is also linked to a number of other provincial initiatives, including strong communities, the Golden Horseshoe greenbelt, growth management in the Golden Horseshoe, source water protection and the rural plan.

Moving on to page 6—the next few slides deal with how the land use planning system in Ontario works—there are several key documents which guide development. At the provincial level, there is the Planning Act. There is also the provincial policy statement, and there are provincial land use plans which cover various parts of the province. At the local level, the documents include municipal official plans and municipal zoning bylaws. I will discuss these documents in a little more detail in the following slides.

Page 7 outlines that the Planning Act provides the legislative framework for land use planning in Ontario. It is the basis for local planning administration. It's a basis for the preparation of planning policy at the municipal level; for instance, municipal official plans. It's the basis for development control, things like zoning at a municipal level, and also for land division; for instance, sub-



divisions and consents. It also identifies provincial interests in land use planning. As well, it sets out the role for the OMB in the planning process and establishes the requirements and process for public participation in planning.

Moving on to page 8, some of the fundamental aspects of Ontario's planning system are that the province's interest in planning is to protect the social, economic and natural environment for Ontario's residents. Municipal planning is mandatory throughout most of the province and is supported by the provincial policy statement, which guides the preparation of municipal official plans and local decision-making. The Planning Act provides for a process which permits municipalities to change or amend planning documents at any time.

Moving on to page 9, general provincial interests are listed in section 2 of the Planning Act—that came up earlier this morning. These include such things as the protection of agricultural resources and ecological systems, orderly development of communities, and public health and safety. More details on provincial interests are contained in the provincial policy statement, which is issued under section 3 of the Planning Act. At present, all decision-makers must have regard for provincial interests when making land use planning decisions. There are three area-specific provincial plans in Ontario: the parkway belt west plan, the Oak Ridges moraine plan and the Niagara Escarpment plan.

Moving on to page 10, the PPS—the provincial policy statement—is approved by the Lieutenant Governor in Council and is issued by order in council under the authority of the Planning Act. It articulates and provides detail on provincial policy interests in land use planning and guides municipalities in formulating local planning decisions. The Planning Act requires that a review of the PPS be undertaken or commenced every five years to determine whether or not changes are needed to the policy statement. The PPS is under review at this time as part of the planning reform initiative.

Moving on to page 11, the government has initiated Bill 26 and has embarked upon the planning reform initiative because it heard that the planning system is not working as effectively as it should. Changes are required to give municipalities more tools to control their own growth. It also heard that there is a need for more accountability, transparency and public input.

Bill 26 received first reading on December 15, 2003, and received second reading on May 13 this year. The government feels the proposed reforms would open up the planning process and make it more responsive to local needs.

Moving on to page 13, the principal reforms in Bill 26 include the elimination of appeals for proponent-initiated applications for settlement-area boundary alterations or for the creation of new settlement areas unless those applications are supported by the municipality.

It would also provide for increasing the timelines for making planning decisions, for changing the implementation standard for provincial policies to "shall be

consistent with," and for the declaration of provincial interests on matters that are before the Ontario Municipal Board.

I'll go into a little more detail on these proposed changes in the next few slides. In fact, if you turn to slide 14, you'll find that the next three slides deal with the first proposed change I mentioned; that is, the right to appeal planning matters.

The existing Planning Act provisions permit the right of appeal for all applications to amend official plans and zoning bylaws. This right is triggered when a council or approval authority fails to make a decision within 90 days of the application's receipt or when an application is refused or approved.

Moving on to page 15, the proposed Planning Act changes would eliminate that right of appeal on a proponent-initiated amendment which is related to the alteration of all or part of a settlement-area boundary or the creation of a new settlement area and the municipality or approval authority has not supported the amendment.

It's important to stress that this only applies to proponent-initiated applications that alter settlement-area boundaries or create a new settlement area and the local municipality or approval authority does not support them.

On page 16, the rationale for the proposed change is that the ability of applicants to appeal urban boundary decisions or non-decisions has frustrated municipalities. They have indicated that their approved official plans have already been the subject of substantial public consultation, expense and staff resources. These types of appeals have resulted in additional municipal expense and the use of resources to defend approved official plans before the Ontario Municipal Board.

Moving on to page 17, the next area of Bill 26 that I will discuss is the proposed increase in decision timelines before direct appeals may be made to the Ontario Municipal Board. This chart identifies the proposed changes.

You'll see that in the case of subdivision plans, condominium plans and official plan amendments, the existing Planning Act provides timelines of 90 days before appeals may be launched. The timeline would change to 180 days under Bill 26. For zoning bylaws and holding bylaws, the timeline presently is 90 days. That would change to 120 days. For consents and severances, the timeline is 60 days right now, and that would change to 90 days.

In addition, the existing Planning Act provides a 45-day trigger. If notice of a public meeting to consider a proposed official plan amendment is not made within 45 days of receipt of the application, a direct appeal to the Ontario Municipal Board can be launched by the applicant. That's under the existing provision in the Planning Act. Bill 26 proposes to eliminate the timeline for that appeal trigger. However, it's important to say that the public meeting would still take place. There just wouldn't be this requirement for the 45-day notice.

Similarly, the current Planning Act provisions establish an appeal trigger if a public meeting is not held with-



in 65 days of the complete application being received. That is actually proposed to be eliminated with Bill 26.

Moving on to page 18, it's important to note that the timelines I was mentioning start when an application is deemed to be complete. That means that all the required information which is set out in regulations under the Planning Act is provided. So an application has to have a minimum amount of information for it to be considered complete and for the clock to start ticking.

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The rationale for the proposed changes under the Bill 26 system would be that municipalities have advised that there is insufficient time to give meaningful consideration to planning applications. As well, the public has not been able to fully participate in the planning process because of the limited application review time periods. So the proposed changes are intended to address those issues.

Moving on to page 19, the third area I will discuss is the implementation standard for the provincial policy statement. The existing Planning Act provisions provide that decision-makers "shall have regard to" provincial interests and the PPS in exercising any authority that affects a planning matter. The proposed Planning Act changes would provide that decisions of the decision-maker "shall be consistent with" the policy statements issued under the Planning Act when exercising any authority affecting a planning matter.

Moving on to page 20, the basis for the change is that the government is committed to, among other matters, stronger protection of the province's natural environment, prime agricultural lands and mineral resources while supporting strong and sustainable communities. It believes that the Planning Act requirement of "shall have regard to" is not strong enough to implement provincial policies effectively.

Moving on to page 21, the last major area for change that I will discuss concerns the provision of declaration of a provincial interest. The existing Planning Act provisions do not allow the province to declare a provincial interest on matters before the Ontario Municipal Board. As a consequence, the province does not make the final decisions on matters before the OMB.

Moving on to page 22, the proposed Planning Act changes would provide that for official plan amendments and official plans, zoning bylaws and holding bylaws, the minister would have the authority to declare a matter that is before the Ontario Municipal Board to be of provincial interest. If that is declared, the OMB hears the matter but its decision may be confirmed, varied or rescinded by the Lieutenant Governor in Council.

Moving on to page 23, the rationale for this change is that situations arise where conflicts result in decisions which could adversely affect stated provincial interests. Through Bill 26, the province has proposed this mechanism to protect provincial interests. This provision existed previously in the Planning Act but was removed in 1995.

Moving on to page 24: In terms of transitional matters, if passed, this legislation is deemed to have come into force on December 15, 2003. The legislation would allow for regulations to be made to deal with transitional matters; for example, planning applications that are currently in process.

Moving on to the last page, page 25, I've mentioned that Bill 26 is one component of the government's planning reform initiative. Through the planning reform initiative, consultation has been underway not only on Bill 26 but also potential additional changes to the Planning Act that may be necessary, and also implementation tools that could possibly make the planning system more effective. It also included Ontario municipal reform consultation and a review of the draft provincial policy statement which was released on June 1. That consultation took place between June 1 and August 31.

Bill 26 is the first step toward further reforms of the planning system, and the government has indicated that it intends to proceed with these reforms in the future.

That concludes my presentation, Mr Chair. If there are questions, I'd be happy to answer them.

**The Chair:** Thank you, Mr Petersen. Questions or comments?

**Mrs Munro:** I just wondered if you could explain again, on page 17, the last two parts on the chart where there is the elimination of the timeline. Could you just explain that again, please?

**Mr Petersen:** Certainly. Right now, under the Planning Act, there is a provision that indicates that once an application is received in complete and final form by a municipality, there is a clock that starts ticking. A municipality has 45 days to give notice of a public meeting, for one thing, and if you don't meet the 45-day clock, an applicant could launch an appeal. That is proposed to be eliminated.

Similarly, the deadline for holding a public meeting: Right now, the Planning Act provides that a public meeting must be held within 65 days of the application being deemed to be complete. If that meeting is not held, an appeal could be launched to the Ontario Municipal Board. Both of those provisions are proposed to be eliminated, but what I must add is that the requirement that the municipality must hold a public meeting is still there; there's just more flexibility in terms of when the municipality would actually hold the public meeting.

Part of the rationale for that is that we've heard from citizens' groups and the general public that because these meetings were having to be held so soon, it was making it difficult for them to fully understand the extent of what was being proposed and to properly prepare for them. So this would allow the meeting to be held prior to council actually making a decision, but there'd be a little more leeway in terms of when that meeting would actually take place.

**Mrs Munro:** My question came from the idea of how far out it goes from there. Obviously that would just be open to the interpretation of the municipality at the time, if they don't meet the 45-day deadline.



**Mr Petersen:** They would still need to hold the public meeting, though, within the time frames that are eventually decided upon; for instance, within that 180 days.

**Mrs Munro:** That's really where my question was coming from.

**Mr Petersen:** So the meeting would still be necessary. It would still have to be held before a determination.

**Mrs Munro:** Can I ask another question?

**The Chair:** Yes, you still have time.

**Mrs Munro:** On page 20, when you talk about the need for change, I wonder if the ministry has a definition of prime agricultural lands.

**Mr Petersen:** There is a definition in the provincial policy statement that identifies the lands that are of priority to be protected. It includes—and I'm going off the top of my head here—class 1, 2 and 3 agricultural lands plus specialty crop lands.

**Ms Churley:** Thank you very much for your presentation. That was very helpful. Just a couple of questions: On page 9 you mention, in the third bullet, "All decision-makers 'shall have regard to' provincial interests," as opposed to, in all the other areas we talk about, "be consistent with." Can you explain the difference in this case, why it's saying "have regard to" instead of "be consistent with"?

**Mr Petersen:** This is actually referencing the present rules in the Planning Act.

**Ms Churley:** Oh, I see. OK.

**Mr Petersen:** So the present rules actually have—

**Ms Churley:** So that's all you mean there?

**Mr Petersen:** That's correct, yes.

**Ms Churley:** OK, good, because I wasn't clear on that.

The other question I have—and this is a bit worrisome—it's necessary, I understand, when you're in transition and going from old rules to new rules, but on page 24 you say that the legislation would take effect on December 15, 2003, and then, "Legislation would allow for regulations to deal with transitional matters." As I understand it, the minister can make regulations, including which applications already in progress will be dealt with under the old rules and which will be subject to the new rules. I understand that's what it means. I guess I'm wondering how that's going to work. I think those provisions should go into the act, but at the very least, the regulations, which are often done quietly, behind closed doors, should be made public so that all of those concerned—developers, municipalities and communities—know where they stand. Maybe it's more of a political question, but I find that this section of the bill, giving cabinet the final say on these planning matters, appears to give them more power than necessary, and I'm wondering how that can be mitigated. As I said, I understand that in transition there are going to be some left up in the air and have to be balanced, but how are those going to be dealt with?

**Mr Petersen:** I think, ultimately, it'll be the government's decision to make, but I'll just provide a little bit of a rationale in terms of that. The government knew it

would be consulting on the broader planning reform consultation, which included Bill 26, additional changes to the Planning Act and also the provincial policy statement. Out of that consultation, it anticipated that there would be issues that would be raised by stakeholders and others that likely would be best handled through a regulation so that all the issues could be taken care of and so that things were properly addressed.

1020

**Ms Churley:** OK. Those are all my questions.

**The Chair:** Thank you, Ms Churley. The government side: Mr Rinaldi.

**Mr Rinaldi:** Ms Churley asked the question I was going to ask.

**The Chair:** Mrs Van Bommel?

**Mrs Maria Van Bommel (Lambton-Kent-Middlesex):** I just wanted to clarify the issue Ms Churley brought up about when all this would come into effect and the issue of retroactivity in the transition. During consultations we have heard a lot of concern expressed about that particular part, and we are certainly looking at that very, very carefully.

**The Chair:** OK. Thank you very much, Mr Petersen, for taking the time and briefing our committee on the technical side of the Planning Act.

#### TORONTO CATHOLIC DISTRICT SCHOOL BOARD

**The Chair:** We're a little bit ahead of time, but we'll move on just the same. Is Oliver Carroll, chair of the Toronto Catholic District School Board, here? Yes, they're right here. Thank you very much. You have 15 minutes, of which you can take the whole 15 minutes or leave time at the end for questions from the three parties.

**Mr Oliver Carroll:** Thank you, Mr Chairman and members of the committee. I'm also joined by Paul Crawford, who's the board's superintendent for planning.

Later today you will hear from the two major associations representing school boards in Ontario. We're in support of what they're going to say, but I wanted to give you some specifics around the broad policy issues.

In Toronto, we have a little over 90,000 students in 200 locations. One of the main concerns we have about both the current Planning Act and the proposed changes to it is that it doesn't recognize education as a major component within a community. It talks about the general planning issues and provincial policies and strong and sustainable communities and all the rest, but it doesn't recognize the role that education plays.

In the province, there are approximately two million students in our elementary and secondary schools. While we all have reasonable relationships with our respective municipalities, I guess—I'll step out on a limb there; we have pretty good ones with the city of Toronto—the fact of the matter is that on a fairly regular basis we find ourselves in the situation of having either to bring portables on to our property or to build new schools where we hadn't anticipated them previously.



The nature of enrolment, of course, is that people move and decide, for a variety of reasons, to send their children to one school or another. In many cases, they take that decision a couple of days before school starts, or they may take it earlier in the summer, but they certainly don't inform the school boards themselves that they're going to do that until school opens the day after Labour Day. So the use of portables and the building of new schools is a major issue, especially for boards like ours and boards in the 905 that face a fair amount of growth.

I'll give you an example. Our secondary schools have a capacity enrolment of 115%, which means that we put more students in the classrooms than the government suggests we should. With our elementary schools, and the average across the province, it's in excess of 90%. The problem with numbers like that is that it doesn't recognize individual communities. It does show you that the schools are fairly well filled to capacity, but any particular community at any point in time may find itself actually over capacity.

The problem arises in trying to secure approvals from the municipality. The municipality has to take heed of the Planning Act and the policies, but as I say, education is not included in there. We want to suggest that the government seriously consider amending the act to include education in both that and its policy statements. The problem in not doing it is that if the government doesn't consider education as a priority around its facilities, then there's really no need for the municipality to do that. For us to approach them and suggest that education is important—and while everybody recognizes that, including this government, the fact is that if it's not enshrined in both statute and policy, it's a lot of talk, from the point of view of the municipalities.

Trying to secure building permits to bring in portables a couple of days after school starts can in many cases take a couple of months. With class size caps in the secondary schools from collective agreements and with the government's proposal now to put caps on the primary grades, we find ourselves more and more having to look to external, external to the actual building facilities, and that includes portables.

Let me give you an example here in the city of Toronto. Because of the move to the 20 cap in the primary grades, as we all know—we have a school where we have an outside daycare with about 25 children, and we have to give notice to that daycare to move out so we can ensure there are enough classrooms for the primary grades. At the same time, we can't secure a permit from the city in any type of timely manner to bring in a portable. So we have a situation where on the one hand we're of course supporting the government's direction around primary grades, and on the other hand we're also trying to support the direction around daycare but have been forced into a situation where we're going out looking for daycare spaces for private community operators.

The city has its own share of issues and problems and rightfully turns back to us and says, "We know it's a

priority for you, but it's not a priority for anybody else, in that there are a lot of issues we have to deal with."

The groups this afternoon will discuss specific changes to the act, but to make it simplistic, we really think the role of education in strong and sustainable communities should be enshrined in the act and in the policy statement. I would be glad to answer any questions you have on that.

**The Chair:** Thank you. We'll move to the official opposition side.

**Mrs Munro:** I wonder if you would care to comment on some of the timelines being extended and whether or not that might make things easier for you or more difficult. I'm thinking of going to 180 days from 90 days.

**Mr Carroll:** From our perspective, that applies mostly to putting up new buildings. The issue isn't so much around that period; it's the period after, when we're trying to secure building permits and the last part of the technical matters from the city. We have two high schools where this has gone on now for a couple of years; it might have gone on even longer except for the fact that the new mayor has a very personal interest in this and stepped into it. That particular 180 days is not an issue in and of itself to us.

*Interjection.*

**Ms Churley:** Do you want me to go ahead and then come back?

**Mrs Munro:** Would you? Thank you very much.

**The Chair:** We'll come back. You'll still have a minute and a half.

**Ms Churley:** I just have a brief question, because I agree with your proposition here. I'm just wondering if you have a suggestion for an amendment that will fix this.

**Mr Carroll:** The actual legal amendment I'll leave to the associations. Both the public and the Catholic boards will be here this afternoon.

**Ms Churley:** So we can get more information from them about the best approach to this.

**Mr Carroll:** That's right. They'll give you direct information.

**Ms Churley:** I think everybody will agree that this is an area we need to fix—perhaps an oversight. I'm not sure. We'll pay attention this afternoon and think about how to amend the act to include education and schools.

**The Chair:** Is Ms Munro ready?

**Mrs Munro:** Thank you. I'm sorry. My question actually relates to that. I took from the comments you made that you saw the opportunity through something like a provincial policy statement as being the appropriate vehicle for doing something like this. It would seem to me that that would obviously serve the interests of schools throughout the province. Am I correct in assuming that that's the direction you wish to go?

**Mr Carroll:** Absolutely, and as I say, we're here to give you on-the-ground examples; the associations themselves will address the broader issue. It is a large issue, and the timing around getting things done is important, but again, not around the preliminary approval period.



1030

**The Chair:** The government side.

**Mrs Van Bommel:** Thank you very much for your presentation. I should note for you that section 2 of the Planning Act, which details provincial interests, already mentions education. So I take it from your presentation that you want more involvement in the provincial policy statement or something more specific in the act. Could you tell me exactly what you're looking for?

**Mr Carroll:** We're looking for something much more direct and that education will actually be considered by the municipality in the development of its official plan and the impact. Of course, out of that flows all the bylaws and the permit processes and committees of adjustment etc. So we're looking for a much stronger statement.

**The Chair:** Thank you very much for taking the time to address your concerns to the committee.

RENEE SANDELOWSKY

ALLAN ELGAR

**The Chair:** We'll move on to Renee Sandelowsky and Allan Elgar. Please come up to the table.

**Mr Shafiq Qaadri (Etobicoke North):** Didn't you miss somebody, Mr Chair?

**The Chair:** They're not here yet. We're ahead of time.

You have 15 minutes. You can take the whole 15 minutes or leave some time at the end for questions from the three parties. Welcome to the committee.

**Ms Renee Sandelowsky:** I'm just going to take half the time and Allan will take the other half, if that's OK. We discussed that before with Tonia.

Thank you very much for the chance to speak. My name is Renee Sandelowsky. I'm a resident of Oakville as well as a town councillor for ward 4, which is in north Oakville. I'm here today to speak as a resident and as someone who has been disillusioned with the way planning is currently managed in Ontario.

In my opinion, the system works really well if you are a developer or another special interest. Too often, I find it is the special interests, those whose only bottom line is profit, who gain from the way we plan in Ontario. It is the regular people who suffer, because it is the quality of our lives and of our children's that is being compromised.

Obviously, I don't have time now to give you all my comments, so I would just like to make a few points about the OMB and the provincial policy statement.

Regarding the OMB, I would abolish it altogether and start over with a new appeal board that people can have confidence in, because if you had designed the OMB with the actual intention of making it totally user-unfriendly, I don't think you could have done a better job. I spent last summer at the OMB with Oakvillegreen, a grassroots, all-volunteer environmental group, appealing Oakville's decision to develop north Oakville. I can

tell you from first-hand experience that it was frustrating and intimidating. If the province really wants residents to get a fair hearing, then there must be a level playing field. In my opinion, there is absolutely no way an individual or a group of volunteers can successfully fight against corporations and their high-priced lawyers the way the system is currently set up, particularly with the threat of costs hanging over our head. Certainly intervenor funding would be a good start to help solve the problem.

Regarding the provincial policy statement, the vision for Ontario's land use planning system states that "the long-term prosperity and social well-being of Ontarians depend on maintaining strong communities, a clean and healthy environment and a strong economy." For the last five years that I've been actively involved in community issues, I've got to tell you that I found "a clean and healthy environment" to be very low on the province's priority list.

When I first read the natural heritage section of the provincial policy statement, where it says in section 2.1.2 that development and site alteration will not be permitted in environmentally significant areas unless it has been demonstrated that there will be no negative impacts on the natural features or the ecological functions for which the area is identified, I was duly impressed. But when I saw the reality of planning decisions, I was mortified. You can't really expect us to believe that the Red Hill Creek Expressway hasn't destroyed acre upon acre of significant lands, that the mid-peninsula highway won't eat up parts of the Niagara Escarpment or that the potential paving over and development of the Trafalgar moraine in Oakville and the headwaters of many of Oakville's major creeks won't have a negative impact on our community. How about the fact that five out of seven environmentally sensitive areas in Oakville have either been destroyed or taken off the list because the qualifying criteria could no longer be met?

Where is this balance that we're supposed to have? I think we need clear definitions and strongly and clearly worded policies and laws that will ensure that development cannot occur at the expense of our natural systems. We need clear and stronger policies and laws regarding health effects of land use decisions. We need stronger policies and laws to ensure a Walkerton can never happen again and to ensure that not one more person will die from causes directly related to our declining air quality.

I applaud this government's initiative in attempting to reform our existing land use planning system. I think what you are doing is a great beginning; however, I believe you should take it further and be stronger and be very clear in your words, because the bottom line is that this system is not working. There is too much ambiguity.

To conclude, there are a couple of very important land use decisions that need to be made in Oakville, and the residents expect that the province will do everything in its power to help us. After all, that's why we elected you.

First, the public owns 1,100 acres of land in north Oakville. These 1,100 acres include the headwaters of 11



streams and approximately 22 wetlands. The town wants to use much of this land for industrial/employment purposes. The people say no. Conservation Halton says no. I, along with many others, expect the province to keep its election promise to protect these lands by donating them to Conservation Halton to be preserved as part of the Golden Horseshoe greenbelt in perpetuity.

Second, I along with many others also expect the province to commit to the protection of our natural heritage system in north Oakville, the system that the province itself helped design, by declaring it an area of provincial interest and doing whatever is necessary to ensure it is protected forever.

Municipalities are extremely vulnerable to development pressure. We need more than weak provincial guidelines that can be interpreted in many different ways. We need concrete, clear provincial policies that are written in law, such as no development in an ESA or an ANSI, period. We need your leadership. Thank you very much.

I'll let Al take the rest of the 15 minutes.

**Mr Allan Elgar:** My name is Allan Elgar. I am a resident of Oakville and a regional and town councillor. I'm speaking on behalf of myself as a person who has been involved in the planning process and witnessed how the current system does not work for the residents.

I am grateful that the government has started to take steps to rectify the gaping holes and weaknesses in the Planning Act, the provincial policy statement and the long overdue reform of the Ontario Municipal Board.

I will be brief and to the point.

On the Planning Act and the planning system, the reforms to the Planning Act through Bill 26 are a step in the right direction. Preventing appeals to the OMB of urban expansions that are opposed by municipal governments is excellent. The increased time available to review applications is a must.

However, the preamble to the Planning Act should state the following: "It is established law in Canada that compensation does not follow land use planning decisions, whether land uses are increased or decreased. Thus landowners are not compensated for decreases in land uses, nor do they have to reimburse the government when they receive an increase in land use made pursuant to the land use planning process."

The Planning Act should provide specific zoning for all woodlots, wetlands, buffers, groundwater recharge and discharge, areas containing flora and fauna etc and natural heritage systems to ensure that these lands are not part of the development envelope.

Environmental assessments should be cumulative environmental assessments. Today it is death by a thousand cuts.

In the provincial policy statements, the consultation paper on the Web site states that "this is a complementary policy document to the Planning Act—it embodies good planning principles and seeks to protect the public interest."

I have to wonder whose public interest they are referring to. In 1998, Environment Canada, the Ontario Ministry of Natural Resources and the Ontario Ministry of the Environment provided guidelines for rehabilitation of habitat in Ontario, where they stated that a watershed should have 30% woodland cover.

In 2001, American Forests recommended that 40% woodland cover should be maintained to benefit air quality due to the function of leaf structures as ozone reaction sites. Retention of forest cover is even more significant on shorelines receiving pollution across the Great Lakes. Because ozone is not depleted over water, ozone concentrations are higher along shorelines.

**1040**

In 2001, Oakville had only 12.2% woodland cover. In Halton region, if you look at all the land below the escarpment, we had only 12.17% woodland cover.

The province should demonstrate concern for the public health of its citizens by establishing minimum targets in the PPS which would ensure that woodland coverage is increased to a level that will protect residents; for example, 30% to 40% woodland coverage versus the 12.2% and declining in Oakville.

If the Ontario Realty Corp lands in Oakville, which are 445 hectares, were given to the conservation authority and the lands were reforested, our woodlot coverage would be increased by approximately 259 hectares, which would increase our coverage by just 1.86%.

Between 1995 and 2001, our woodland coverage was actually reduced by 180 hectares. We just lost 80% of another woodlot in Oakville a few weeks ago.

Minimum wetland coverage targets should also be included in the provincial policy statements. All moraines should be mapped to ensure that they do not negatively impact groundwater recharge and discharge.

For preserving green space, the province must supply strong guidance on how to map out natural heritage systems with adequate buffers, since the systems we have today do not have any teeth. Whenever I refer to the natural heritage reference manual, I am reminded that it's only for reference purposes.

In part I, the preamble to the PPS should clearly state that if a priority is to be identified, it should be the protection of the natural heritage system and related features and functions. All matters of provincial interest should be equally balanced. The statement should state, "... provides for an appropriate balance to guide growth and development while protecting the quality of the natural environment, resources of provincial interest and public health and safety."

In part IV, "Vision for Ontario's Land Use Planning System," it should be pointed out in the last paragraph that long-term environmental health and social well-being should take precedence over short-term economic prosperity considerations.

In part V, "Building Strong Communities," under "Expansion of Boundaries of Settlement Areas," where boundaries have been expanded prior to an environmental analysis being completed, there can be no assurance



that there will be any development, and natural heritage systems and related features and functions will be protected. It should be stated that land uses and development patterns which may cause environmental or public health and safety concerns will be avoided.

The policy should be revised to acknowledge that the continued maintenance of a 10- to 20-year supply of residential and urban expansion is not appropriate where other aspects of the PPS are considered to be in the public interest. There needs to be flexibility to allow the protection of prime agricultural land to take precedence over urban expansion.

In the natural heritage policy, 2.1.1—"should be maintained, restored or improved, where possible." This type of wording allows the developers to drive a truck through the loopholes.

On Ontario Municipal Board reform: In my opinion, their powers should be gutted. Fear of the OMB has forced council to make decisions in haste instead of waiting until information was available to make educated decisions.

I remember hearing at our final meeting prior to the approval of the Oakville official plan amendment, "We have to make a decision due to the fact that we could be at the OMB as early as July," even though environmental studies were not even close to being completed.

Recently, council approved removal of 80% of a small two-hectare woodlot because of fear of the OMB costs.

Currently, in my opinion, the OMB works for the developer but not for the residents who live here. If residents are to have a say, intervenor funding must be provided for the case, and there must be no awarding of costs to residents' groups.

The province must provide the regions and municipalities with the tools necessary to make the proper decisions for the residents, ie, zoning, and appropriate legislation to ensure that the OMB is not able to overturn sound environmental decisions.

In closing, I would ask that you listen to what our provincial leader told us in Oakville in September 2003 and prepare an implementation plan to ensure that north Oakville is protected. The front-page headline was, "McGuinty Would Keep ORC Lands Safe from Developers."

For more specific information related to changes that should be made to the planning reform, I would ask that you visit the following links. I have listed them. I know you don't want me to read them out, but it's [www.escarpment.org/cgi-bin/Other\\_PDF\\_reports/Prov.Policy.Statement.Aug.19.pdf](http://www.escarpment.org/cgi-bin/Other_PDF_reports/Prov.Policy.Statement.Aug.19.pdf). The Niagara Escarpment Commission has prepared some excellent documentation that I really hope everyone here will read and listen to and take direction from.

Thank you very much for listening.

**The Chair:** We have time for one question, which is going to be the government side.

**Mrs Van Bommel:** I want to thank you both for your participation in this process. I wonder, are you aware

that, under the Planning Act, the municipalities have the right to restrict use of natural heritage resources?

**Mr Elgar:** What we are being told by our staff is that we do not have the power to restrict. We have not been given the powers to do that and, therefore, we will not be able to save a natural heritage system, for example. Zoning itself will not do that. They keep saying, "You might have to compensate," and we are saying—I am a firm believer of what you were saying, that compensation is not required, but this is where we have such a huge gap right now in Oakville. It's a major concern. So if you can give us exactly where we can apply it, I would love to get that information so I can take it back to council.

**Mrs Van Bommel:** Well, certainly, we'll make sure we get that to you. Also, you mentioned intervenor funding. Could you tell me who you think should qualify for intervenor funding?

**Mr Elgar:** What is referred to at most OMB hearings—the lawyers will bring up special interest groups. The people who have no vested interest and no financial gain they call "special interest groups," when, in fact, the special interest groups are, in my opinion, the developers themselves who own the land, who stand to profit.

I feel the residents are at a huge disadvantage today to take any case to the OMB because of the costs. You need lawyers. You can't go without lawyers, really, because you don't have the details, and they tie you up in red tape. The residents feel totally unheard. Then you will also have the lawyers of the developers say, "You could be awarded all costs." When you start thinking of thousands and thousands of dollars—and residents have children to put through school and houses to pay for. It just isn't working. That's the fear. They call it the thin veil. Even if you're incorporated, as a residents' group, you can be awarded costs. So that has to completely be killed.

**The Chair:** Thank you very much, Mr Elgar, and thank you for taking the time to inform this committee on your concern.

**Mr Elgar:** I appreciate the privilege of being here to at least voice our concerns. I think, too often, the developers are the only ones at the table most of the time, and I think this government has taken a huge step forward by trying to get public input. So thank you.

## ONTARIO PROFESSIONAL PLANNERS INSTITUTE

**The Chair:** The next presenter will be the Ontario Professional Planners Institute, and it's going to be Loretta Ryan, Greg Daly, and Donald May, president.

Once again, thank you very much for taking the time. We're a little bit ahead of time, but we appreciate the fact that you are here before your time was scheduled. You have 15 minutes, of which you could take the whole 15 minutes or leave some time for the three parties for questions.

**Mr Donald May:** Good morning. My name is Don May, and I am the president of the Ontario Professional



Planners Institute. With me today is Greg Daly, who is chair of our policy development committee, and Loretta Ryan, who is our staff manager of policy and communications.

I would like to thank the committee for the opportunity to speak and note that my remarks today are based on recommendations contained in our letter to the minister dated March 15, 2004, and in our submission regarding planning reforming consultations, dated August 30, 2004. A copy of these are included in your package.

The Ontario Professional Planners Institute, also known as OPPI, is the recognized voice of the province's planning profession. OPPI provides leadership and vision on policy matters related to planning, development and other important socio-economic issues.

Over the years, OPPI has contributed to the reform of planning in Ontario. We have demonstrated a strong commitment to working with all governments. As the Ontario affiliate of the Canadian Institute of Planners, OPPI brings together the 2,600 practising professional planners from across the province. In addition, there are approximately 400 student members.

The breadth of our members' knowledge and the diversity of their experience provide OPPI with a unique perspective from which to contribute to planning reform. OPPI members work for government, private industry, a wide variety of agencies, not-for-profits, and academic institutions, engaging in a broad range of practice areas, including urban and rural community planning and design and environmental assessment.

#### 1050

OPPI is a professional association funded entirely by membership fees and program and activity revenue.

Through our public policy program, we conduct research on planning issues and general quality of life issues. We distribute this information to our members, government, the public and the media. Our purpose is to provide objective and balanced submissions based on the collective experience and wisdom of our members.

#### Overall comments:

We are pleased that the government is committed to improving the land use planning system in Ontario.

Communities need not only the proper tools to deal with the range of issues affecting how they grow and prosper but a complete range of tools to do so. If the proposed legislation does not give them a complete range of usable tools, it will simply complicate the planning process rather than make it more responsive to local needs.

The province has undertaken an ambitious program and schedule of reform of the Ontario planning system, with several initiatives simultaneously taking place within a number of ministries. There is concern about the need to undertake these reforms in a coordinated and thoughtful manner and to ensure that there is sufficient time for review and comment.

A number of planning reforms underway are interconnected. Some of the planning reform issues are on their own track, but many others are complicated and

interconnected. The PPS and the Planning Act should, for example, move forward together.

It is key that these initiatives are clearly understood within the Ministry of Municipal Affairs' areas of responsibility and also within the broader framework of planning reform underway at the Ministry of the Environment and the Ministry of Public Infrastructure Renewal. Growth management issues are an example, as these are intertwined with planning initiatives. Many issues are also highly technical and complicated in nature. It is difficult, for example, to ascertain the structural relationship between watershed planning and planning reform.

Interconnectedness is not only at the provincial level. These reforms impact many local planning processes and documents. More time is needed to properly assess the implications of these changes.

At this point in time, we would like to provide comments on four areas as they pertain to Bill 26: (1) the importance of the provincial policy statement, (2) the need for definitions, (3) the declaration of provincial interest, and (4) local autonomy.

The importance of the provincial policy statement: The provincial policy statement, PPS, sets out overall policy direction on matters of provincial interest. The review of the PPS has been underway since 2001. The importance of this planning document cannot be understated. While the PPS may not garner as much attention as some of the other major initiatives the government has unveiled lately, it is the tool that makes everything else work. The review should be finalized and action taken to implement the revisions as soon as possible.

One area of implementation that must be addressed is how to ensure that planning decisions are consistent with the PPS. The wording "be consistent with" is intended to result in decisions that more closely reflect the intent of the PPS. There needs to be clear guidance on how competing interests might be balanced, and it must be made clear that there is room for practical planning decisions. You do not want literal interpretations or minor inconsistencies in phraseology to cause good planning to be delayed or frustrated.

One of the essential elements of planning is balancing social, economic and environmental interests. Planning involves a comprehensive analysis of all resources and application of all pertinent policies. Without clear direction on the province's priorities for environmental protection and community growth and on what to do when conflict occurs, the new wording provides continued challenges. Exactly what are municipalities expected to be consistent with?

Finally, the various planning reform initiatives provide an excellent opportunity to provide a coordinated framework through which the government sets an overall direction for growth in the province. Within such a framework for growth, there should be flexibility so that individual communities—rural areas, small cities, northern Ontario, the GTA—can make decisions that respond to local needs. This flexibility must also address the



ability of some municipalities to go beyond the minimum standards in the PPS and still be consistent with provincial policy.

Definitions require further refinement to achieve what the province intends. As noted earlier, we are particularly concerned that a working definition of "be consistent with" be clearly established so that municipalities understand what is intended by the phrase and how it is to be applied, recognizing that the application will vary from circumstance to circumstance.

To clarify intent, the province should ensure that identical definitions are included in all planning reform legislation. I believe that in the legislation right now we have three or four definitions for "brownfield," and it would be better if we had one definition.

**Declaration of provincial interest:** We have three main concerns with the sections on declaration of provincial interest. First, we believe that the PPS should clearly and concisely state the criteria used to identify a matter of provincial interest. Second, the province should declare a provincial interest much earlier than the minimum 30 days before an OMB hearing. Matters of appeal that involve a provincial interest are major policy decisions, and all parties need to prepare properly before making arguments at a hearing. Third, the wording in Bill 26 on planning matters under appeal to the OMB needs to be clarified. It appears that the intent is to maintain the province's interest in a matter under appeal to the OMB where the reason for appeal relates to conformity with the PPS whether or not the minister formally identifies it as a provincial interest. The current wording suggests that unless the minister declares the matter of provincial interest, the province's interest is waived in matters before the board.

**Local autonomy:** Bill 26 seeks to give Ontario residents more of a say in how their communities grow. OPPI believes that providing adequate time to obtain input and resolve disputes promotes good planning, particularly for complex proposals. Ensuring that local councils are able to prevent premature urban boundary expansions is also consistent with good planning, especially when comprehensive growth management strategies are in place. Provided that time is allowed for parties to undertake the statutory actions required of them and for the public to be involved in the establishment, review or amendment of public policy, OPPI supports this approach.

Although we support the amended time frames proposed in Bill 26, we are concerned with the wording of proposed subsections 17(53) and (54) and parallel sections of the Planning Act related to cabinet's role in situations in which a development application adversely affects a matter of provincial interest. While the province may need to express provincial interests that override local perspectives, this section appears to express the exact opposite of municipal empowerment by giving decision-making power to a body removed from the local issue. In reality, especially if the province takes an expansive view as to what is of provincial interest, all of

these decisions except the most controversial ones will be rubber-stamped by an overburdened cabinet committee entirely on the basis of provincial staff reports. The proposed wording suggests a process that is less than transparent, timely or efficient and fails to give the community any reassurance that its concerns are being properly addressed. Strengthening the PPS would be a more efficient way to address or even avoid situations in which cabinet has the final decision on planning matters.

I think the important point there is that it would also reduce the number of matters having to go to cabinet if it's much clearer in the policy statements. I think when the policy statements are clear, we can all perform and implement those policies better, as we did in the affordable housing area before. Those policies were very helpful throughout the province for the profession.

**Implementation:** We are pleased the Ontario government is committed to improving the land use planning system in Ontario. However, the substantive and comprehensive nature of many of the proposed amendments will place a significant burden on municipalities as these jurisdictions endeavour to apply the new provisions. New components such as watershed base plans, performance monitoring and indicators are welcome, but need to be accompanied with sufficient provincial direction and supporting resources to make them possible. Further consideration needs to be given regarding additional tools to those proposed in current available documentation since no new implementation tools are identified. Transferable development rights, incentives and other implementation tools need to be considered.

In summary, we are dedicated to the promotion of good planning and would welcome the opportunity to work with the Ministry of Municipal Affairs, the Ministry of Public Infrastructure Renewal and its Smart Growth Secretariat and other ministries to help explain publicly the critical importance of managing growth. This is important, given the significant amount of land already approved for development in growing Ontario municipalities.

#### 1100

Ontario's registered professional planners have a great deal to contribute to both the policies and mechanics of better planning, and unparalleled knowledge of how to make the government's policy directions actually work effectively across the province. We encourage you to use OPPI's resources in planning for growth management, economic development, environmental policy and effective public engagement as part of the plan to bring change to land use planning in Ontario.

Thank you, and we would be pleased to answer any questions. I'd also like to make a comment on the record that Rural Town Planning Day is November 8.

**The Chair:** Thank you, Mr May. We have time for questions. We have three minutes left, and I'll go on to Ms Churley.

**Ms Churley:** Thank you once again for your very informative presentation. It's much appreciated. You, in your presentation, highlighted an area of concern that



was expressed here this morning when the minister was here, and that is appeals to cabinet and that sort of thing.

I wanted to ask you, and I'm not sure if you addressed it or not, but that is, this bill, if passed, is retroactive, I believe, to December 2003. What the bill says is that the minister may make regulations on the transitional matters, including which applications already in progress will be dealt with under the old rules and which will be subject to the new rules. I'm very worried about that, for obvious reasons. If it's not in the legislation, it will be made by regulation. Have you thought about that? It's a very complicated area, when you bring in a bill retroactively, how you deal with existing applications.

**Mr May:** If I could ask Mr Daly to answer that.

**Mr Gregory Daly:** I think it's important to understand that there is, for the public, for municipalities and for developers, the need for a consistent approach, that there be consistency in the way in which the government approaches the implementation of the legislation. So the transition provisions will be an essential element of the legislation that comes forward.

To do it by regulation is difficult because it then establishes a process by which those who are most affected by the legislation don't know the means by which it's going to affect them. So it would be my thought that, to the greatest extent possible, the transition provisions be brought forward as part of the legislation so that everyone can understand how the implementation is to occur.

You heard in our presentation to you this morning that implementation is the key to this, both the resources which the government provides to municipalities, to individuals, to ensure that there is consistency, and also that the regulations are there just so everyone can understand what the scope of this change is going to be. Regulation after the fact makes it difficult for everyone to understand how it's going to affect them. So it's imperative that this all occur at the same time, in the same way that we said that, for example, the provincial policy statement changes must come forward at the same time as the Planning Act changes, because they are so interrelated. The provincial policy statement is the underpinning to all of this change. So they must come together.

**Ms Churley:** Yes, I agree with that, and I was making some of those points this morning. I also agree that it should be in the legislation itself. But I guess at the very least, the regulation should be made public as soon as possible so that all the developers, municipalities and communities know exactly where they're standing and can be involved in the process around making those regulations.

**Mr Daly:** I think that our—

**The Chair:** If you would, for our record purposes, state your name, please.

**Mr Daly:** I'm sorry. My name is Gregory Daly.

**The Chair:** Thank you, and our time is up.

**Mr Daly:** Yes, sir.

**Ms Churley:** But you agree with me.

**The Chair:** Thank you very much for taking the time.

## URBAN DEVELOPMENT INSTITUTE/ONTARIO

**The Chair:** The next group to be called is Urban Development Institute/Ontario (UDI): Mr Neil Rodgers, president. The committee would like to welcome you to the public hearings for this most important piece of legislation, the Planning Act, Bill 26. You have 15 minutes.

**Mr Neil Rodgers:** Thank you, Mr Chairman and members of the committee. My name is Neil Rodgers. I am the president of the Urban Development Institute/Ontario. We are happy to be here.

UDI members play a crucial role in the provincial economy and its sustainable growth. The land development and construction industries are vital contributors to the provincial economy. We account for over 10% of the gross domestic product—some \$50 billion—and employ over 350,000 workers. Ontario's construction industry in 2003 expanded at a rate of almost 9%, which was twice the annual growth rate of the province of Ontario as a whole. This economic growth is essential in order for the government to provide necessary services such as health care, education and infrastructure.

Our members remain committed to planning and building the best possible communities for Ontarians. Our industry supports strong environmental protection measures and believes that growth can be achieved in balance with environmental protection.

Fairness, accountability, transparency and certainty are the principles Ontarians expect from their elected officials and in fact were the core values in the government's campaign commitments. During the past several months, Minister Gerretsen has echoed these principles in various public speeches, as exemplified by his remarks at the recent AMO conference, and I'd like to quote: "In order to help you"—municipalities—"do the good job that you do even better, our government is moving forward ... giving councils greater decision-making power so you can protect and enhance the best interests of your communities—through planning reforms, empowering municipal councils and through changes to the Municipal Act allowing for more permissive legislation."

UDI recognizes the challenges presented by attempting to successfully balance the competing priorities inherent in land use planning. UDI is concerned that Bill 26, as drafted, has many unintended consequences and, in fact, runs counter to the principles and ideals expressed by the government and the minister. Specifically, certain provisions of the bill place decision-making in a black box that is in want of due public process, the very opposite of transparency and accountability.

In our opinion, the bill as drafted requires some substantive amendments in order to ensure strong communities while delivering accountability and transparency in the planning process. UDI recognizes the government's intention to reform this process, but in our respectful submission, the proposed changes to the bill fail to create a more robust planning system and remove transparency, accountability and certainty from the planning process.



More importantly, to realize real, positive planning reform, the government must integrate innovative fiscal tools and policy approaches as well as examine existing regulatory processes that are barriers to progressive solutions in order to promote growth in a responsible manner.

UDI submits that the proposed power of the minister to declare a provincial interest with respect to municipal planning documents should be removed from the bill. The bill provides that when the minister declares a provincial interest, such decisions of the OMB may be confirmed, varied or rescinded by the Lieutenant Governor in Council. The municipal planning process in the existing Planning Act is rigorous and affords the minister ample opportunity to comment on planning matters. In some cases, the minister is still the approval authority for official plans, and in any event the minister has always had the power to comment on planning matters. These are under subsections 17(6) and (12) of the Planning Act. This authority gives the minister broad scope to impose provincial policy at the local level. The minister always has the option of being a party to any OMB hearing to advance provincial policy as set out in the provincial policy statements. The minister's voice, which is a powerful one, will always be heard and taken into consideration.

In comparison, cabinet decision-making is a closed and political process. Cabinet ministers making the decisions will not have had the benefit of hearing the evidence, judging the credibility of the witnesses or the merits of an application. This is truly black-box decision-making. Such a process undermines the credibility of the planning process and the independence of administrative tribunals.

1110

Lastly, it is unclear whether parties to the proceedings will be able to present written submissions to cabinet. Also, will cabinet provide reasons for its decisions? This precludes the transparency that the government claims is essential to public process and creates further uncertainty in planning matters.

However, if the government does not intend to remove the provision from the bill, we recommend that the scope of this power be narrowed considerably. The power to declare a provincial interest should be limited to a municipality's official plan. If the minister seeks to intervene, he should do so only at the policy stage. The official plan phase is when planning policy is addressed, to which the minister has input and is often still the approval authority. Zoning bylaws and holding removal bylaws are the implementation of official plans and not matters of policy. We submit that intervention at the implementation stage, as contemplated in this bill—sections 6 and 7—after landowners and other stakeholders have come to rely on decided policy, is far too late in the process. Ministerial/cabinet intervention at this stage is extremely prejudicial to landowners and does not respect municipal autonomy. For these reasons, UDI submits that the above-referenced sections of the bill must be deleted in their entirety.

In summary, we recommend that the bill be amended accordingly: that declarations of provincial interest be related solely to section 3 of the Planning Act and restricted to official plan policy only; that the minister give written notice, with reasons, for the declaration; that the notice of a declaration of provincial interest be filed in writing to all parties at least 60 days in advance of a pre-hearing conference; and that cabinet appeals be excluded from this bill.

As currently written, Bill 26 would apply retroactively to December 15, 2003. The proposed section 70.4 would also grant the minister extremely broad discretionary powers to make regulations addressing transitional matters, which regulations would prevail over any section of the act.

This amendment would grant the minister the authority to determine which matters and proceedings, even those commenced before December 15, could be confirmed and disposed of under the Planning Act as it existed before or after the 15th. These provisions are extraordinary and create far too much uncertainty in the planning process for both municipalities and landowners. The problems associated with this uncertainty have been magnified by the passage of time since December 15, 2003, as applications have been processed and decisions and investments have been made in the intervening period. Further, in our opinion, this provision in the bill violates the principle of transparency and accountability.

Historically, amendments to the Planning Act have included transitional provisions that protect applications filed before a certain date and that continue to be processed under the act as it existed at that time. Even where there were exceptions to the rule, the exceptions were clearly stated and generally related to cases where no decision had been made prior to the new legislation coming into force. An example of this is the Oak Ridges Moraine Protection Act. At the very least, landowners are entitled to know what the rules of the game are for existing applications. Those rules should be clear and should not unfairly prejudice those who have invested time and money in the processing of applications under the existing rules and relied, in good faith, on decisions of a municipality.

In light of fairness and due process, we request the government to reconsider this section in its entirety and recommend that the new legislation apply only to applications commenced after the legislation receives royal assent and not be applied retroactively.

Bill 26 would alter the "have regard to" test in the current act by requiring decisions, comments, submissions or advice with respect to planning matters to "be consistent with" policy statements issued under section 3. UDI continues to believe that the "have regard to" test is the most appropriate. The current test respects the diversity of communities across the province and encourages locally driven solutions, but at the same time ensures that the overall preferred provincial direction is respected while allowing for a balancing of the interests. Furthermore, it will impede the province's own decision-



making ability to undertake provincial capital-related schemes and undertakings. The "be consistent with" test will exacerbate these problems, whereas the "have regard to" test allows for an appropriate balancing of PPS policies.

UDI opposes AMO's most recent stated position supporting an alternate test "in conformity with." UDI submits that the test of conformity is a fundamental departure from AMO's previous position, does not reflect the true diversity and makeup of its membership and does not bring into balance a system of competing priorities. Conformity is at least as restrictive, if perhaps not more restrictive, than "be consistent with."

It is worth noting that AMO supported the return of the "have regard to" clause during the Bill 20 debate, believing "that the rigid operating clause limits municipal decision-making authority on the form and nature of development in their communities. AMO is very supportive of returning to the 'have regard to' operating clause. It readily acknowledges the need to balance what are often conflicting policy interests." That comment was made to the standing committee on resources development in 1996.

In conclusion, we submit that Bill 26, in its current form, provides isolated amendments to the Planning Act, which, rather than encouraging municipalities to plan responsibly, risk simply bogging down planning in even more process, threaten private sector investment and municipal autonomy and will produce a host of unintended consequences.

We are, as an organization, committed to the principles of fairness, accountability, certainty and transparency. We hope that you support these principles and support the recommendations to amend the bill as stated in this submission. Thank you.

**The Chair:** Thank you. You have four minutes left, of which I will give two minutes to the official opposition and the third party.

**Mrs Munro:** Thank you very much. Mr Rodgers, I'd like to come to the point in your presentation where you talk about the "be consistent with" section. You may have heard the previous presenters, who talked about the importance of balancing in planning social, economic and environmental interests. They raised the question in their presentation about exactly what municipalities are expected to be consistent with. They also refer to the need for a framework that would provide flexibility.

I wonder if, in your experience, particularly as you look at some changes in positions taken, for instance, by AMO, you could give us some examples of the kinds of problems that are inherent, as the presenters before us have suggested, in balancing social, economic and environmental interests. In your experience, are there specific examples that would demonstrate the kind of complexities that come when you move from "have regard to" to "be consistent with?"

**Mr Rodgers:** Thank you for the question. Planning is an incredibly dynamic process. There is no one solution, no one silver bullet that can solve the problem. We like

to use the term "competing interests." You have, for example, competition of the appropriateness of agriculture versus aggregates. You have the protection of wetlands versus other economic activities, whether they be land development or mineral extraction. You put them all into a basket and it becomes incredibly difficult for municipalities, for landowners.

I would suggest to you that the province of Ontario has many conflicts or potential conflicts with the provincial policy statement. It may be a public good such as extending a subway or transit line into the 905 region, which nobody will argue is necessary to help people move faster. Clean air—when you begin to add them all in, I do not envy anybody in the process who is trying to make the best decision, but what the provincial policy statements try to do is provide a framework and guide the parties involved in the decision-making process to come up with the best solutions. There may have to be mitigation strategies to do that, and that could be part of the ultimate approval.

1120

**Ms Churley:** Here we are again. You spend a good part of your life coming before the—

**Mr Rodgers:** And I left you some time to ask me a question this time.

**Ms Churley:** You did, too. Gee, I wish I could remember what we left hanging the last time.

You and I don't agree on lots of things. For instance, the "have regard to" versus "be consistent with": You know I argued that when we brought it in and then when the Tories took it out, we were on different sides.

There is an area here where we agree—perhaps not to the ultimate solution—and that is the regulations for the transitional period. I'm very concerned about that. I spoke to the minister a bit about it too. I believe it should be in the legislation or, at the very least, it should be made very public and not be done behind closed doors and be a big surprise.

You mentioned the Oak Ridges moraine as an example of—I don't have time to go into it. But what I'm asking you quickly is, do you have examples of some projects or developments that could get caught up in this that could be very harmful to communities or to developers or whatever?

**Mr Rodgers:** I don't have any particular examples because our reading of the bill suggests that the minister, by regulation, could go back to a development anywhere in Ontario and say that this project should be applied under this bill, Bill 26, and not the Planning Act as it was in place the day the applicant made the application. That's the concern we have as an industry. We are aware of municipal councils operating now that really have been questioning whether or not they should process particular applications received at their planning counter because they don't know how far back, at any time, the minister can go.

The fact that there are no reasons to be provided concerns us greatly. We do not know what reasons, whether they be appropriate or inappropriate, may be used. I



would have to rate our strongest concern with this bill, retroactivity, at number 10 on a scale of one to 10, with 10 being the highest.

**The Chair:** Mr Rodgers, thank you once again for your comments and also for bringing to the attention of the committee your concerns.

#### GREATER TORONTO HOME BUILDERS' ASSOCIATION

**The Chair:** I would call on the next presenter, the Greater Toronto Home Builders' Association: Jim Murphy, director of government relations, and Jeff Davies, member of the GTHBA. You have 15 minutes to make your presentation. You can take the whole 15 minutes or leave some time at the end for questions. You can proceed.

**Mr Jim Murphy:** Good morning. I'm Jim Murphy, director of government relations for the 1,200-member-company Greater Toronto Home Builders' Association. With me this morning is Mr Jeff Davies, who's a member of our government relations committee. I'm going to be providing an overview of the housing industry in the GTA today and Jeff is going to speak to some specifics about the legislation itself.

We've distributed as part of your package—I hope everybody has copies of it—three pieces of material within there. The first is entitled *Turning Dirt Into Gold*, which is a paper we did last spring that highlights the increasing land costs and lot costs within the greater Toronto area. The second paper, which I believe is in blue, is entitled *Growing Strong Communities or Growing More Uncertainty?*, our formal response to both Bill 26 and Bill 27, which were introduced last December at about the same time. Then we've also included our recent submission to the minister on the provincial policy statement. We've also included a copy of our brochure entitled *Powerhouse*, which talks about the important economic contribution of the housing industry.

Restrictive land policies imposed by the provincial government are driving up the cost of new housing throughout the GTA. Restrictive land policies are making housing less affordable and threaten to reduce the job and tax revenue that the housing industry generates for all levels of government.

As referred to in our *Turning Dirt Into Gold* paper, on average in the last two years, land costs in the GTA have increased by more than 50% and lot costs for fully serviced lot prices have increased by 40%. These numbers are from last spring and, if anything, the prices have been increasing over the course of the summer.

More worrisome is that entry-level housing for first-time buyers, like the 20-foot townhouse lot, for example, which is fairly common in many of the 905 communities, has risen the most, making home ownership more difficult for young families. It is these smaller lot sizes that promote smart growth. Indeed, the GTA is already one of the most densely built urban communities in North

America. It is something that the province wants to promote further, and not discourage.

Simply put, the GTA is growing by more than 100,000 people annually and they have to live somewhere. Our industry, aided by low mortgage rates, a healthy rental market and good job growth, has been a strong economic contributor to the overall health of the provincial economy.

As noted in our *Powerhouse* document, the housing industry in the GTA generated nearly 170,000 jobs last year and added nearly \$12 billion to the overall economy. CMHC notes that every new house or condominium is responsible for three jobs. Yet today our industry is faced with a plethora of new initiatives, regulations and legislation from the province. I know that the minister referred to some of these when he spoke to the committee this morning. They include Bill 27, the greenbelt legislation which was recently passed by the Legislature, and in fact there will be a second piece of greenbelt legislation this session as the year's freeze ends; the actual greenbelt task force report and its recommendations which are now out for further comment; and Bill 26, the changes to the Planning Act, which is before this committee. The ministry has also released a discussion paper on a new provincial policy statement, which is very important. It is directly linked to the Planning Act and the changes that are before you today. There was also a discussion paper released on the future of the Ontario Municipal Board. There is in Minister Caplan's ministry a proposal for a new growth plan—I say here that it's for the entire GTA; actually, it's even larger than that as it goes down to Niagara and out to Peterborough. Finally, the government has stated that it will bring in changes to rent control legislation in this session.

Our concern and fear as an industry is that all this increased regulation will result in higher land and, inevitably, higher housing costs for purchasers. We would encourage the government in general—we've been saying this to all ministers we meet with—to move slowly and make sure it does things right, if for no other reason than to ensure that the continuing economic health of our sector is maintained.

Jeff is going to speak to some of the specifics in the legislation before you.

**Mr Jeff Davies:** Good morning, ladies and gentlemen. I will speak to some of the GTHBA's direct concerns with the legislation before you. These are highlighted in our paper, which is in your package: *Growing Stronger Communities or Growing More Uncertainty?*

First of all, Bill 26 prohibits landowners and builders from appealing to the OMB if a municipality turns down or does not render a decision on an urban boundary expansion. As Mr Murphy indicated, land supply is quickly becoming an issue. I noted from the minister's remarks this morning that the government's intention in the planning reform agenda is to bring back local accountability and transparency to land use planning. Our observation is that if you don't allow any appeals on expansion of urban boundaries, you will be taking away



transparency, because these decisions will be made behind closed doors. Few reasons will be given, the debate will be among an elite, there will not be appropriate transparency or public consultation and you will be into an area which is scandal-prone because different players will be looking to endear themselves to the local council in a manner that is simply not transparent.

We recognize that these matters are becoming more complicated, so we would suggest that an even longer time for urban boundary expansion—say, a year—be given to the municipalities, and then allow the right of appeal to be reinstated in the legislation. That would keep matters transparent and would provide the municipalities with plenty of time to deal with the requested urban expansion.

Second, and very much along the same line, we have grave concerns about the power given to cabinet in Bill 26 where matters are declared to be of provincial interest. Again, if the agenda of the government, as stated by the minister, is to bring back transparency and accountability—we all know that cabinet, through Canadian tradition, operates in secrecy. That's not meant to be a criticism; it's just an observation on the truth. The decisions that come out of cabinet—cabinet minutes—are not made public. Cabinet decisions are not generally accessible to the public. The public doesn't know how the cabinet is or is not lobbied, pressured. We don't want a fourth arm of the government—namely, the media—to get involved in these things to the extent where it pressures cabinet to come up with a different outcome.

1130

We say that the way the act is written now, there is substantially less transparency and accountability, and that's not appropriate. If you're going to proceed to have cabinet appeals and cabinet decisions, then, in order to address our concern with respect to transparency and accountability, the GTHBA recommends that the province develop criteria for applications that are appealable to cabinet, including what types of applications are appealable, and institute criteria on which cabinet would judge the appeals.

Second, cabinet must issue its decision within a certain time frame—we suggest 90 days—and issue reasons for its decisions on applications before them, similar to decisions given by the OMB or other tribunals.

Third, we're opposed to any retroactivity in the rules covered by Bill 26. The legislation allows the minister to select which planning applications currently in the system may be affected by the new rules. As the previous speaker indicated, we are in favour of clear transitional rules, so that applications commenced under the rules in effect on the day of the application remain in effect.

Once again, we say that allowing the minister by regulation or otherwise to select, in such a *carte blanche* way, which applications are going to be proceeded with under the old rules and which applications are going to be proceeded with under the new rules means less accountability and transparency, more power to the minister and less power to the local municipalities and other stakeholders. In addition, it engenders substantial

unfairness and uncertainty, not only to the planning process but to the economy and to society as a whole.

Those are our requests. We ask you to reinstate appeals for urban boundary expansions but allow slightly longer time periods for the municipalities. We ask you to live up to your pledge to keep the Planning Act more, not less, transparent. We say that the bill works in the opposite way.

We'd be happy to take your questions.

**The Chair:** We have approximately six minutes left, which is going to give two minutes for each party.

Just before we proceed, for purposes of the record I think the heading of your document should read, "Bill 26, An Act to Amend the Planning Act," not "the Greenbelt Protection Act."

**Mr Murphy:** As I said in my comments, there is a lot going on.

**The Chair:** Ms Churley from the third party.

**Ms Churley:** I wanted to talk to you as well about the transitional period and the fact that this is going to be dealt with by regulation. Obviously, when a new bill is coming into force there is a transitional period, particularly when it's retroactive. What's your vision of how to deal with all those applications caught up in that transitional period?

**Mr Davies:** Our view is that all applications which were commenced under the old act—certainly prior to December 15 when Bill 26 was introduced—should, by statute—in other words, by a provision in Bill 26—be continued under the legislation they started under. If, on the other hand, an application was filed after December 15, when Bill 26 was introduced, then we can see the validity in some transitional rules.

There are proposed regulations in the draft provincial policy statement—on page 32, I think—which could be applied to applications filed after December 15, 2003. But if applications were filed before December 15, 2003, we say that they should continue on the basis of the rules which were in effect on the date of the application.

**Mr Murphy:** Can I just add to that? Since there's so much going on in terms of legislation and regulations affecting our industry, this is an issue that not only applies to Bill 26 but it will apply to Bill 27, the greenbelt legislation. It will also apply to the provincial policy statement, in terms of what rules are to be in place at the time of application. So this is a very fundamental and important issue, and we've always taken the position that there should be no retroactivity.

**Ms Deborah Matthews (London North Centre):** My question relates to the point you made when you related the increase in lot prices to some of the legislative restrictions. I wonder if you have any research or anything that would give us some guidance on what—low interest rates, for example, and you mentioned an increase in population. All of those things obviously contribute to an increase in lot prices. Can you break it down and tell us how much of it you can attribute to each of those different factors?

**Mr Murphy:** That's a hard exercise. The point of our report that we talked about, Turning Dirt Into Gold, was



just looking at land prices and lot prices. There is information that's readily available. We've noticed large increases over the last year or so. The housing market itself, certainly within the GTA, has actually been fairly healthy for a much longer period of time than that—I would say going back to the late 1990s—because of population growth, low mortgage rates and a fairly healthy rental market.

Our point is that there's a lot of uncertainty right now. We have the changes that are before you on Bill 26, we have the greenbelt legislation. We still don't know as an industry, a year after that legislation, what the boundaries are for it. So the market will respond to the thinking that there will be less and less land. We saw a similar response when the Oak Ridges moraine legislation was brought in by the previous government. It's just a cause and effect of basic economics. When there's less of something, prices will increase for the remaining that are allowable to proceed. It's just a supply and demand issue.

The other thing I would say that is very evident—and I think this is a concern—is you're seeing leapfrogging development. This is particularly an issue in south Simcoe county, where Barrie is the fastest-growing city in the province. You've got a lot of applications in for new development in south Simcoe county. Our view is, when you start restricting development in the central part of the GTA, people will go further and further afield. They're going to start skipping over—Guelph or Orangeville in the west. We're seeing evidence of this by new home sale numbers, any way that you measure it, land deals that have been done. That's also responding to what's happening.

**Mr Davies:** If I could just add very briefly, and I know we're time-limited, we have the freeze with Bill 27 and we have the promise to make urban expansion substantially more difficult via Bill 26, together with cabinet interventions. So it certainly makes the market believe that it's much more difficult to do development in greenfields. On the other hand, in every intensification case in the GTA, there is opposition. It's equally difficult to do intensification. So no matter what you do today, it's exceedingly difficult. As a result, it has had an effect on supply. I think, aside from low interest rates and a healthy economy, these regulatory measures are driving up prices. I don't think there's any doubt about that. If it was just the difficulty with intensification with more freeboard on the urban expansion, that might be different, but if you combine the two of them, there's undoubtedly a big impact on the market.

**Mrs Munro:** I want to carry on in the same area that you were just responding to. The fact is that frequently greater density is seen as the answer for better land use, so to speak, yet as you point out, we have 100,000 people annually coming. You alluded to the opposition that you see to any intensification undertakings, but I also wondered if you had done any work in the area of looking at people's expectations in terms of being homeowners and also the kinds of, perhaps, unintended consequences that come with greater intensification.

**Mr Murphy:** We're actually doing that right now as part of our response to the growth plan that Minister Caplan has released. In fact, we are doing some focus groups of residents in the GTA. We'll be doing some polling on that very question.

Of the initial results we've seen, the real issue in the GTA is transportation, it's infrastructure, it's people who, whether they're in the 905 or in the city, are stuck in traffic. They want investments in public transit and they want more roads, essentially. They're very passionate about that.

So we are doing some work on that, and I should just say, to add to Jeff's comments, at GTHBA, we're very strong supporters of intensification. We have many members in the city who build condominiums and small townhouse in-field projects. Twenty-five per cent of all new home sales in the GTA are in the city, which is very healthy and very positive, and we obviously want to see that continue. A third of all the home sales in the greater Toronto area are condominium, the vast majority of those high-rise; again, another sort of positive form of housing that promotes intensification.

But as Jeff has said, when you do that in a city, and even in some communities in the 905, there are a lot of residents and existing neighbourhoods that don't want change. So this is the issue that we're dealing with. As land is further restricted, where is that growth going to go, when you're bouncing up against people who don't want a 10-storey condominium in south Oakville on Lakeshore Boulevard?

**The Chair:** Thank you, both of you gentlemen, Mr Davies and Mr Murphy, for your comments and your concerns.

**Mr Davies:** Thank you, Mr Chairman. We're very hopeful that we've been heard and that there will some amendments to the bill which will result in some real transparency and accountability. We're very hopeful about that.

**The Chair:** The next group, I believe, just arrived. We could take a five-minute recess.

*The committee recessed from 1142 to 1147.*

## ONTARIO HOME BUILDERS' ASSOCIATION

**The Chair:** We'll proceed immediately with the next presenter, the Ontario Home Builders' Association, Mr Peter Saturno, who is the president.

**Mr Peter Saturno:** Thank you very much, Mr Chairman and members of the committee. My name, as the Chairman said, is Peter Saturno. I am president of the Ontario Home Builders' Association. I have also served as president of the Durham Region Home Builders' Association—you'll have to excuse me; I've been told to speak quickly so there's time for questions. I've been involved in the residential construction industry for almost two decades, and I am president of Midhaven Homes. Together with my father, Sam, our firm has built hundreds of homes in the east end of the GTA, but



primarily in Durham region. I am a volunteer member in this association and, in addition to my own business and personal responsibilities, I am dedicated to serving this industry.

The Ontario Home Builders' Association is the voice of the residential construction industry in Ontario. As a volunteer organization, we represent about 3,600 member companies that are organized into 30 local associations across the province and employ roughly 250,000 to 300,000 people directly. Our membership is made up of all disciplines involved in residential construction. Together we build 80% of the province's new housing stock and renovate and maintain our existing stock.

The residential construction industry has generated tens of thousands of new jobs and contributed billions of dollars in direct tax revenue in Ontario over the past few years. Our housing starts reached a 14-year high of 85,180 in 2003, and the new-housing industry directly provided over 240,000 person-years of employment last year. The combined impact on the economy for new housing and renovation was approximately \$33.6 billion in GDP for the province of Ontario. Thus far, 2004 is shaping up to be another banner year for the industry, with Canada Mortgage and Housing Corp forecasting 84,500 housing starts for the upcoming year.

We are pleased to be given an opportunity to present our views on Bill 26 with respect to planning reform, the provincial policy statement and the OMB. We applaud this initiative by the government, which is timely considering the anticipated growth in our great province.

While our members are supportive of some of the discussion and proposed reforms, they've also expressed serious concerns with the provincial direction on other issues with respect to the Planning Act, the OMB and the PPS, or policy statement.

Our members from across the province have noted that the provincial policy statement has been formulated in the context of growth anticipated in the GTA, which is not necessarily representative of the situation in the rest of the province. We are also deeply concerned that the current direction of the provincial policy statement removes the freedom of choice for Ontario families about where they can live and what type of home they can live in.

Our members are pleased that the province has seen the importance of discussing reforms to the OMB in context with the discussions around planning reforms. We suggest that the present structure of the OMB should not be significantly changed. The development industry wants to ensure that the OMB is a fair and impartial third party that will make informed decisions based on the merits of the application in front of the board itself.

The OHBA strongly recommends that any decisions made by the government on the various planning reform initiatives currently underway be done in a consolidated manner so that a decision on one piece of legislation does not preclude the implementation of another.

Bill 26 has proposed new timelines to review planning applications, which will lead to further delays in an

already lengthy process. We suggest that if the province wishes to extend the decision-making time for municipalities, then the Planning Act should also specify the maximum circulation time that agencies be allowed to make comment on an application. We also question the wisdom of lengthening the severance application from 60 to 90 days and recommend that the original 60 days was more than sufficient. The province should focus on ensuring existing time frames are met rather than slowing the entire process.

The province's redevelopment and intensification policies are admirable, and we are in support of these initiatives. However, these policies need to be flexible enough to adapt to individual situations. It should be noted that NIMBYism and municipal politicians who play into the hands of organized ratepayer groups are the single largest obstacles to intensification efforts in Ontario. The OHBA stresses that what Ontario's communities need is not necessarily the same as what the residents of those communities want. Redevelopment and infilling based on intensification need special status within the Planning Act in order to overcome opposition to such projects from existing residents.

We encourage the province to maintain the current standard of updating official plans every five years, and zoning bylaws should be updated every 10 years. The province should also leave enough flexibility in the system for municipalities to review their official plans to accommodate future growth.

With respect to the transition provisions in implementing Bill 26, the Ontario Home Builders' Association requests that applications already in the system or applications submitted up to three months after the passing of Bill 26 should be grandfathered in and not be subject to the current requirements.

With respect to the provincial policy statement, I would reiterate that our members have expressed concern that the PPS has been formulated in the context of growth anticipated in the GTA, which is not necessarily representative of the rest of the province. Perhaps a second set of policy statements should be written to address growth within smaller rural and northern communities.

We would further recommend that reasonable goals be set for intensification and redevelopment by a municipality, using local historic trends as a basis of forecasting future growth. Allowances for flexibility should be made to revise these goals as they become more achievable.

The policy statement in the efficient settlement pattern section of the housing section should be reviewed to ensure that, while opportunities for intensification and redevelopment within built-up areas be encouraged, the ability to extend development into designated growth areas should not be compromised.

In regard to land supply, the OHBA seeks to clarify the definition of "available land." The term "available" for redevelopment and intensification could be interpreted as vacant and suitable for development. However, just because the land is available does not mean it is marketable to new housing consumers. Therefore the



OHBA suggests that land for both long-term and short-term supply be deemed "marketable" versus "available."

Our members also seek clarification and consistency in many specific policy statements which are more thoroughly outlined in our written submission. The wording in some sections contradicts other areas of the policy statement, which could create problems if new development must be consistent with the inconsistent provincial policy statements.

Therefore, OHBA very strongly recommends that the current wording of the Planning Act be retained to reflect that planning authorities "shall have regard for" provincial policy statements.

A final comment on the provincial policy statement is that it seems to suggest what the development industry is not allowed to do, or is telling us what we're not allowed to do, rather than clarifying what we are allowed to do. It provides no clear direction to the private sector on how it should invest in, or indeed plan for, the provision of affordable, healthy communities in the future. As it stands now, the policy statement gives the impression that Ontario is closed for business.

The Ontario Home Builders' Association has several recommendations regarding the future of the Ontario Municipal Board as well. The OMB has served a vital role as an independent adjudicative body in the province of Ontario since 1897. It's actually been the envy of the other provinces. The OMB ensures that land use decisions are made based on good planning in adherence of the stated goals of the province.

In our opinion, the role of the OMB should not diminish such that it becomes a shell without any authority. It has always been intended as an appellate body to which decisions made by a municipal body could be referred and tested against proper planning policies. Sometimes decisions made at the municipal level are the outcome of emotional public debate. It is therefore appropriate to have an independent body like the OMB to provide sober second thought, to remove the emotion and provide a decision based on the planning merits of the application.

The NIMBY syndrome is the single largest threat to the province's stated intensification and growth management goals. Opposition to development from neighbours often impacts municipal council decisions. Unnecessary delays often occur when municipalities are reluctant to deal with controversial applications, especially intensification projects, even though they conform to policy statements passed by the province and local zoning bylaws. The OMB is crucial in situations like this to ensure that land use decisions are based on the merits of the application and not on volatile political opposition. Again, what Ontario communities need is not necessarily what some of those residents of the communities want.

The OHBA recommends that the government enhance the role of the OMB by attracting and retaining highly qualified members to the board who are experienced in land use planning and legislation. The residential construction industry further recommends an increase in

remuneration for board members and a lengthening of a member's tenure to a minimum of five years. Board members should be subject to an annual performance review as well as receive training to enhance mediation and alternative dispute resolution in the OMB process.

Valid concerns about new development should always be brought forward to the OMB; however, frivolous applications have no place before the Ontario Municipal Board. Sometimes, the issues of concern to the appellant are unrelated to planning principles but rather are based on misconceptions of the development and the process involved. If a case is not made in good faith or is frivolous or vexatious, or is made only for the purpose of delay, costs should be awarded against the appellant.

The planning system is best served by the province articulating its interests through the policy statement, with municipalities adopting clear policies through their official plans. The industry strongly supports an independent OMB that provides checks and balances outside the political process.

Mr Chairman, members of the committee, the Ontario Home Builders' Association is committed to working with government at all levels to create the right balance and to ensure that Ontario is prosperous and healthy, and that we always have an affordable housing stock.

I thank you for your attention and interest in my presentation, and look forward to hearing any comments now or any time in the future as well.

**The Chair:** We have four minutes left. We're going to give two minutes to two parties. I'll go to the government side. Any questions?

**Mrs Van Bommel:** Yes, thank you, Chair. Thank you very much for a very thought-provoking presentation. Looking at page 3 of your presentation, in which you say, "Perhaps a second set of provincial policy statements should be written to address growth within smaller rural or northern communities," could you explain to me how this would differ from what we have now, which is one statement of policy for the entire province?

**Mr Saturno:** I'd be happy to. The policy statement that has been written now and the policy statement that was there beforehand have always been based in the GTA or the Golden Horseshoe and the growth patterns that are happening there. Once you get into rural Ontario or into northern Ontario, you don't have the same growth patterns, you don't have the same pressure on growth, the urban sprawl that everyone talks about. The policy statement will hinder growth in those areas, and we get that from our member communities, from Sault Ste Marie, from Sudbury, from Thunder Bay. We're painting everything with one brush rather than looking at the distinct differences between large, urban areas and rural areas.

**Mrs Van Bommel:** Can you give me any specific incidents that would demonstrate what you're talking about?

**Mr Saturno:** I've actually got some that my staff would have. I'd be happy to provide something like that to your office.



**Mrs Munro:** I wanted to come back to a point that you made right at the end of your presentation on the support for the independent OMB and your comment, “outside of the political process.” I wondered if, in looking at this bill, you would regard the new role of the minister to be something that could, in fact, be considered in that area you described about the political process. Is that the sort of thing you were referring to?

**Mr Saturno:** Actually we’re referring to the fact that the OMB should be arm’s length from any political process or manoeuvring of any political thoughts. Unfortunately—and I’m speaking at the municipal level with no offence to anyone—short-sighted political decisions will sometimes rule at a city council, where, if you’ve got the non-partisan, arm’s-length direction of the OMB to actually rule for that—and there I do have an example, if you want, in Toronto itself of a high-rise intensification proposal by Minto a few years back. Local politicians were actually unseated because they supported it because it fell within all the guidelines. So we’d like it to be actually completely arm’s length from any political manoeuvring.

**Mrs Munro:** And obviously with the appropriate provincial policy statements that would guide the OMB in making those decisions so they are above that kind of influence.

**Mr Saturno:** Yes.

**Mrs Munro:** Thank you.

**The Chair:** Thank you very much, Mr Saturno, for taking the time to express your concerns to this committee.

We will recess until 1:15.

*The committee recessed from 1202 to 1317.*

## EARTHROOTS

**The Chair:** I will call this hearing to order. The next person we have on the list is Josh Matlow, campaign director for Earthroots. You have 15 minutes, of which you can take the whole 15 or leave some time at the end for question period from the three parties. You can proceed.

**Mr Josh Matlow:** Thank you very much, Chair, and members of the committee, for allowing me the opportunity to speak with you today.

Earthroots, as you may know, is an Ontario-based environmental advocacy organization founded in 1986 with a mandate to protect wilderness, wildlife and watersheds through research, education and action. Earthroots has been involved in preserving green space in southern Ontario for many years. Our organization and its members have been actively engaged in working to protect the Niagara Escarpment and the Oak Ridges moraine. As a result, we have taken a keen interest in all the government’s recent initiatives aimed at curbing urban sprawl in the greater Toronto area and throughout the Golden Horseshoe.

Primarily through Earthroots’ experience with our campaign to protect the Oak Ridges moraine, our group

has been an outspoken critic of how the Ontario Municipal Board, and the land use planning process in general, has operated in this province. Therefore, we are encouraged by the reforms to the Planning Act that the government has laid out in Bill 26, the stronger communities act. We are cautiously optimistic that, in tandem with other measures that the province is taking, and others we hope to see, Bill 26 will help to curb sprawl, thereby protecting the ecologically sensitive green space areas and wildlife corridors from urban development.

Earthroots is pleased that section 2 of the bill amends the Planning Act to ensure that all planning decisions made in Ontario must be consistent with provincial policy instead of merely making reference to it. Without this change, municipal councils, the Ontario Municipal Board and other decision-making bodies could nullify the efforts of this province to control sprawl and protect much-needed green space.

While we applaud this initiative, our friends at the Pembina Institute have stated—and we agree—that it is imperative that Bill 26 be put in place after the government adopts the revised provincial policy statement, or PPS. If Bill 26 were to become law before the new PPS is adopted, planning decisions would have to be consistent with the current PPS, which does not entirely espouse the principles of sustainable development and green space protection that the current government claims to support.

1320

Earthroots is encouraged by the reforms to the OMB appeals process included in Bill 26. First, the extension of the time period given to municipalities to make a decision on a planning matter before the applicant can appeal a decision to the OMB is a sound decision. Currently, developers are able to appeal to the OMB and, in some cases, before a municipal council even has a chance to review the merits of an applicant’s proposal. There are cases, such as some high-profile developments in Richmond Hill and in the Yonge and Eglinton area in Toronto where developers have, in my opinion, purposefully gone to the OMB before the municipality has had an opportunity to make a decision, because they believed that their permit would be rubber-stamped.

I would ask each committee member to take a look at the very sound recommendations that FoNTRA, the Federation of North Toronto Ratepayers’ Associations, has made on how to reform the OMB. I would also direct members to read through Legislature Hansard and read speeches on the subject by your colleague Mike Colle, MPP for Eglinton-Lawrence. I would be very happy to provide these documents to you. These are prime examples of how the OMB has been used by some developers to usurp local democracy. We are glad this bill will give municipal councils the time they need to make informed decisions on how their communities will grow in the future.

Second, the right to appeal to the board would be stripped in situations where an applicant is requesting an alteration to the boundary of an urban settlement area or wishes to create a new urban settlement area in most



cases where that could conceivably arise. This is a good reform. There have been far too many instances where planning has been done by developers with the consent of the OMB. This reform would eliminate their right to appeal a municipality's decision not to extend their boundaries and encroach on green space or agricultural land. Earthroots is, of course, strongly in favour of this consequence of this reform.

However, there have been many decisions by municipalities to encroach on green space and agricultural lands. I have concerns about the consequences of this reform in cases such as these. I have been told that there is ministry staff available to answer questions and I will read out the exact portion of the bill for you, and then I would appreciate if staff would indulge me and answer the following question after the conclusion of my deputations.

Subsection 4(7.1) of the bill states that, "a person or public body may not appeal to the municipal board in respect of all or any part of a requested amendment if the amendment or part of the amendment proposes to alter all or any part of the boundary of an urban settlement area in a municipality or to establish a new urban settlement area in a municipality."

Would this amendment restrict the right of an individual or citizens' group to appeal to the OMB in a situation where a municipality adopted an amendment to their official plan that expanded their urban settlement area, or if a citizens' group put forward an amendment to appeal their municipality's current urban boundary on the basis that it was originally adopted as a result of an earlier poor planning decision?

Let me tell you why I asked. According to the Toronto Star, one third of the total land that is presently designated "urban" in the GTA has yet to be developed. Some of the proposals the Liberal government is trying to put in place now are an indication of the shift toward sustainable land use practices, including urban infill, brownfield development and building communities at a higher density in general. Then I would argue that a lot of the land I mentioned that is yet undeveloped is not necessary for commercial or residential development. Let us leave it as green space for now. I am worried that the public's right to enact these changes will be lost in this bill.

The other reason I posed this question is I'm concerned that the act is too focused on the OMB and does not address the impact that decisions made at the municipal level have on sprawl. There are certainly many development proposals that are antithetical to the principles of sustainable community building that never get to the OMB because they are approved by the municipality.

Even with a share of the provincial and federal gas tax money, the majority of the revenue raised by municipalities will still come from property taxes. As a result, unless a drastically different arrangement is worked out and a genuine new deal for Ontario cities is initiated now, many municipal governments will still find it in their best

interest to opt for expanding their communities in order to balance their budgets.

Many developers, for many years, have contributed significantly to municipal politicians' campaign coffers. By doing this, and having the financial means to do this, developers have been in an advantaged position to have an undue amount of influence on decisions regarding urban planning made at councils.

When an appeal is taken to the OMB, developers have the financial ability to hire the best experts and lawyers and are not overly concerned about workdays spent in the proceedings. This is, however, a very different scenario for private citizens and community groups fighting an appeal at the OMB. Most are not in a position to hire expensive experts and lawyers or to take days or weeks off work. The province must do something now to make this process more equitable for them.

In this context, I would like to move on to the last section of the bill: matters of provincial interest. Bill 26 allows the minister to advise the OMB that a matter before it is likely to be adverse to the provincial interest. In those cases, the board's decision is not final, and the decision rests with the Lieutenant Governor in Council. While Earthroots agrees with this amendment to the Planning Act, we feel that this right should be extended, given that there is a great deal of development that is adverse to the provincial interest which never comes before the OMB. We feel it is essential for the minister to have the same privilege in planning matters before a municipal council or other planning body while they operate under this status quo.

There must be election finance reform. If the province can contribute toward restraining the influence of developers over many municipal councils, I believe it will find that more councils will operate and make decisions in the long-term interest of the people of Ontario rather than the short-term financial interests of some developers.

Along with restoring the integrity of the planning process through municipal electoral reform, I believe that the manner in which OMB members are selected must be reformed as well. I believe that OMB members should merit their appointment because of the expertise in the issues that they will be given the privilege to deliberate over. Really, it should simply be what they know, rather than who they know, with respect to how they are selected.

In conclusion, I want to thank the committee very much for taking on this honourable and timely task to make our municipalities, the provincial government and the OMB work better for the people of Ontario.

**The Chair:** We have four minutes left. Two parties will have a chance to ask questions. I'll start with the official opposition.

**Mrs Munro:** I'm sorry I was unavoidably detained and not able to be here right at the beginning. One of the issues that we've heard from other presenters has to do with some kind of surety in terms of planning. You referenced in your presentation some issues that you felt



demonstrated poor planning. I wonder if you could give us your perspective on some of the issues around surety in terms of people looking at decisions that have been made by a previous council in a municipality, for instance, and have gone through the appropriate process of the day, where there might then develop some questions around the kind of surety that people would have in the concerns you've raised.

**Mr Matlow:** Obviously, it's important to provide a certain level of surety to any company that puts money into an investment, that believes government is there to provide a stable economy they can work through. I don't accuse developers of doing much wrong. What I do suggest is that the province has not often been responsible with respect to balancing the needs of the developers and many communities and, of course, habitat for wildlife, other green spaces and agricultural land. Therefore, I think it is absolutely fair to take a look at the decisions that have been made in the past and also pre-empt any irresponsible decisions that may be made in the future by making sure there is surety for developers, environmentalists and community groups alike that all planning will be done always keeping environmentally sensitive lands and agricultural land in mind.

1330

You asked earlier about what is irresponsible planning that needs to be addressed. An example is areas where there is low density, where it was done in a cheap manner, a hasty manner, to make as much money as possible. Again, I don't begrudge developers, but they're in the business of making money, just as a hotdog vendor sells hotdogs; they're there to earn a living off what they do. Therefore, in a community where there isn't the density to sustain a lot of the services that the municipal government has to pay for, it doesn't work. That needs to be addressed. We just need to review what has been done, what decisions have been made. I think an example of that would be in Richmond Hill, where I know there was a huge controversy earlier in the year. That decision was made on the basis of a contract which was not just, which was not fair to the people who live there, was not fair to the natural environment, and I think it would have been very fair if the government had gone ahead and worked on and tried to reverse the decisions that had been made.

**The Chair:** I'll move to the third party.

**Ms Churley:** Thank you very much, Mr Matlow. I agree with most of your premises and thank you for bringing them to our attention. I agree with you about the provincial policy statement needing to be completed first, because it's rather perverse and backwards to be passing this beforehand.

I want to ask you about something, and I don't know if you've thought about it at all, but it's an issue that came up quite a bit this morning, and that is the retroactivity of this bill and how the applications that are in transition are going to be handled. It's not covered by the bill but will be completed by regulation by the government. I don't know if you've thought about that piece, but if you have,

what are your thoughts on how that transition period for a retroactive bill should be dealt with?

**Mr Matlow:** Governments, including the previous government and this government, have enacted freezes, and I think it would be fair to freeze any further development while—let's put it this way: If I'm going to make an educated decision on any matter in my personal or professional life, it's important not to continue on a course if you are unsure it is the correct one. I think it would be responsible for the government to put a freeze on new permits and make sure we have something that's going to work for future generations of Ontarians and make sure it's going to work well and work right before any new development is allowed.

**Ms Churley:** But what about those already in process? Because the bill is retroactive.

**Mr Matlow:** Those as well.

**The Chair:** Time is up, Mr Matlow.

**Mr Matlow:** Thank you very much, Chair.

**The Chair:** Thank you for taking the time.

## ONTARIO NATURE

**The Chair:** Now we'll call on Jim Faught, executive director of Ontario Nature. Welcome, Mr Faught. You have 15 minutes. If there's any time left at the end, there will be a chance for the parties to ask questions.

**Mr Jim Faught:** Thank you, Mr Chair and members of the committee. It's a pleasure to be here. I'm going to start off by telling you who we are, then talk a little bit about the bill and sum up with our recommendations.

Ontario Nature protects and restores nature through research, education and conservation action. Ontario Nature champions woodlands, wetlands and wildlife in a landscape approach, and we preserve essential habitat through our own system of 21 nature reserves covering 4,500 acres across all of Ontario.

We're a charitable organization representing 25,000 members, so I sit here at the table today representing my 25,000 members and 135 member groups across all of Ontario—north, south, east and west. We connect individuals and communities to nature in every way we can. We've been a key player in policy and legislation discussions that relate to protection and restoration of nature in Ontario for the past 73 years. We were established in 1931, with seven groups coming together to form the Federation of Ontario Naturalists. We were there 70 years ago when Ontario Nature's Sanctuaries report led to protected wilderness areas in Algonquin Park. Through our efforts 50 years ago, the Ontario Parks Act was proclaimed, and we're glad to hear that it's up for review. After two decades of effort by Ontario Nature, the province now has a strong wetland protection policy. We've been at the table with government through many land use planning exercises, most recently the Oak Ridges moraine advisory committee. I was a member of the central Ontario Smart Growth panel, chaired by Hazel McCallion, and of the Golden Horseshoe Greenbelt Task Force, chaired by Rob MacIsaac.



Ontario Nature provided a detailed submission to the Minister of Municipal Affairs and Housing on the provincial policy statement in 2001 during the five-year review, and more recently we applauded the introduction of Bill 26 in a news release when the bill was tabled for first reading on December 15, 2003. We indicated that the amendments are a positive first step in overhauling the planning process to better protect nature and create smart communities. At that time, we were particularly pleased to see the addition of the new amendment, one that had not been mentioned by Minister Gerretsen when he made the announcement about the upcoming bill on November 21 in Richmond Hill: the protection of the broader provincial interest by enabling the minister to advise the Ontario Municipal Board if a proposed official plan zoning bylaw or related amendments are matters of provincial interest. The decision respecting such matters would then be finally determined by cabinet.

Ontario Nature takes the position that restoring this provision of the Planning Act, one that was lost in an earlier amendment to the act, is most positive, as it allows the province to ensure that land use changes of overarching interest to the provincial government are in the hands of the province, with cabinet as the decision-making body. We applaud that.

While these provisions may not be exercised frequently by the cabinet, the ability to use them is there nonetheless. Municipalities and the OMB will be keenly aware of the importance of decision-making consistent with provincial policy, knowing that their decision-making power may be removed in some cases if and when the province is concerned that a matter of provincial interest may not be adequately addressed.

Ontario Nature supports the amendments to the number of days before an appeal can be filed at the Ontario Municipal Board from the decision or lack of decision by a municipal council or a land use planning matter. The additional time will give municipal staff, councils and community organizations more opportunity to review development proposals and supporting studies—for example, natural heritage, storm water management, hydrology and engineering studies—and possibly to reach agreements with developers so that OMB hearings can be avoided altogether, or at least to narrow the scope and time of those hearings.

Ontario Nature is especially pleased with the proposed amendment in subsection 4(7) of Bill 26 that prevents an appeal to the OMB of a proposed expansion to the boundary of an urban settlement area or to establish a new urban settlement area. We are pleased with the proposal that urban boundary expansions that are supported by municipal councils may be put forward. This provision should help secure urban sprawl by limiting urban boundary expansions, if any, to those initiated and supported by elected municipal councils, reflecting the interests of their communities.

Ontario Nature strongly supports the proposed amendments to subsections 3(5) and (6) of the Planning Act that require that planning authorities—municipal councils and

the OMB etc.—must make decisions that “shall be consistent with” policy statements issued under subsection (1). This will mean that the provisions of the provincial policy statement will need to be adhered to and planning authorities must go beyond merely having regard for the PPS. Our major concern is that this section of Bill 26 should not be proclaimed until a stronger PPS more protective of nature, water sources and natural areas be approved by the government, consistent with the previous speaker.

We would have significant concerns if planning authorities were required to plan to be consistent with the current PPS since the current PPS has many policies that exacerbate urban sprawl and lead to the destruction of many natural areas in this province.

The success of Bill 26 and the Ontario Municipal Board reform hinges on a much stronger provincial policy statement than is now in place. The new PPS being officially in place prior to the proclamation of Bill 26 is an important point. We have recently provided the government with a number of recommendations on amendments to the provincial policy statement. Therefore, Ontario Nature is supportive of the passage and proclamation as soon as possible of all sections of Bill 26, except section 2 of the bill regarding amendments to subsections 3(5) and (6) of the Planning Act regarding “be consistent with.” We respectfully request that proclamation of Bill 26 be delayed until such time as a newer, greener, more environmentally protective PPS is approved. We have made related implementation recommendations to this bill in our EBR submission.

Ontario Nature views Bill 26 as an important first step in overhauling the planning process to better protect nature and create smarter communities in Ontario. We urge the government to implement these amendments to the Planning Act as part of a broad, comprehensive overhaul of the municipal land use planning process in Ontario. Fundamental changes will be needed to better balance the priorities of environmental protection, economic prosperity and human well-being. In order to better protect Ontario’s landscapes, woodlands, wetlands and wildlife from urban sprawl and other development, there is a need for sweeping amendment to the Planning Act, completion of the five-year review of the PPS and fundamental reform of the Ontario Municipal Board hearing process. We are pleased the government is moving ahead with these reforms together.

#### 1340

Ontario Nature will continue to play a significant role in changes to Ontario’s municipal land use planning system through a comprehensive Planning Act amendment, through reforms to the OMB process and through completion of the five-year review of the PPS. These changes are necessary for environmental sustainability well into the future for this province.

To ensure the vitality and prosperity of the citizens of this province, Ontario requires a strong, healthy environment to provide positive environmental services such as clean air and clean water, which will result in thriving



communities. The passage of Bill 26, with our suggested amendments, will be a positive step in the process to achieve a healthy balance for nature for the citizens of Ontario.

**The Chair:** We have four minutes left. I'll go to Ms Churley from the third party.

**Ms Churley:** Thanks for your presentation. I'm pleased to see that you've raised a major concern about the timing of the final passing of the bill.

Do you have any idea—I meant to ask the minister this, and I think I did, but I'm still not clear—when the completion of the PPS is supposed to happen?

**Mr Faught:** We haven't heard yet. We're waiting, as you are.

**Ms Churley:** Right. Maybe we can get that answer, because I think that's critical.

The other thing I wanted to ask: You say that you have recently provided the government with a number of recommendations on amendments to the PPS. Could those be made available to those of us who aren't in government but who have a keen interest in this?

**Mr Faught:** Absolutely.

**Ms Churley:** That would be great. I'd really like to see them.

**Mr Faught:** Recommendations to PPS as well as OMB reform.

**Ms Churley:** Yes, I'd like to see those.

I wanted to ask you the same question I asked the previous deputant, and that is about the retroactivity of the bill and how that should be handled in terms of applications already on the table in a variety of stages. What would your view be on that? It's not going to be in the bill; they're going to do it by regulation, and we don't know what these regulations are going to look like.

**Mr Faught:** I think the signal has been there. The government has announced that they're going ahead with these suggested changes, and I think the retroactivity for those in transition, those in process, needs to be all-inclusive back to the retroactivity date, other than the one section regarding the PPS.

**The Chair:** Thank you, Ms Churley. I'll move on to the government side. Mrs Van Bommel?

**Mrs Van Bommel:** Thank you so much for your presentation. In terms of the PPS and where that work is, we are currently taking the consultation information that we have, and we will hopefully have something this fall that will give us the details around PPS.

In your presentation, I noticed that you have concerns about Bill 26 being passed with the term "be consistent with" before the PPS is ready. I noticed that you mentioned that there were certain issues, and I have to express a certain surprise, because I thought you would welcome "be consistent with" as preferable to "have regard to," but you mentioned there were issues within the PPS that concern you. Could you detail some of those for me?

**Mr Faught:** Sure. We're absolutely happy with "be consistent with." Don't get me wrong. It's a matter of the PPS not being strong enough for the protection of

significant woodlands and wetlands. At this point, for many of them a simple, one-page environmental checklist can be the matter of a write-off of those woodlands and wetlands by an OMB hearing.

We've reviewed, in our OMB review that we've done since 1996, 556 cases, and in 70% of those cases, green lost because there was simply not enough value put in those systems by the environmental checklists that are being made available to the members of the OMB.

So the PPS is weak with regard to this. If we pass this, we're passing something that entrenches the weakness. So we have to fix the PPS, and then we can do Bill 26.

**The Chair:** Thank you for taking the time to come up and give us information that you want us to take a look at, and for your concern.

## URBAN LEAGUE OF LONDON

### FEDERATION OF URBAN NEIGHBOURHOODS (ONTARIO)

**The Chair:** The next group is going to be through video conference. It's the Urban League of London and the Federation of Urban Neighbourhoods (Ontario). We have the television screen in front of us. These people are in London at the present time. Welcome to our public hearings on Bill 26, An Act to amend the Planning Act.

State your name for the record. You have 15 minutes. If there's time left for a question period from the three parties, we will take it. You can proceed.

**Mr Sandy Levin:** Thank you, Mr Chair. My name is Sandy Levin. I'm a past chair of the Urban League of London, and I served on London city council for six years. My colleague, Gloria McGinn-McTeer, who is president of the Federation of Urban Neighbourhoods and immediate past chair of the Urban League, sends her regrets due to work commitments.

FUN, the Federation of Urban Neighbourhoods, is a province-wide umbrella group representing over 75 community associations across the province. The Urban League of London is a member of FUN. The Urban League represents over 20 community associations across London and has been in existence for over 35 years.

Regarding the Ontario Municipal Board, FUN has provided a position paper entitled Fixing the OMB, by our policy adviser, Dr Barry Wellar of the University of Ottawa, to both the Ministry of Municipal Affairs and Housing and the Attorney General, calling for significant OMB reforms, which, if accepted, will ensure the board only hears matters involving the administration of the Planning Act and related legislation, and other Planning Act and related legislative matters only if the government has declared them to be of provincial interest and has specified the scope, nature and implications of the interest as it pertains to the Planning Act or related provincial legislation.

We also urge the government to allow the board to finish hearing any existing appeals but not to accept any more, pending reform.



We also deplore the inherent inequities built into the system whereby community associations cannot partake in the process to the same degree due to limitations of expertise, time and, most importantly, funds.

We note a significant increase in requests for costs on behalf of developers over the past two years. Five years ago, this was rare; now it is commonplace. Five years ago, costs, if awarded—which was rare—were negligible; now they are substantial. This is a further impediment and attack on citizen participation. This trend is tantamount to intimidation, similar to the American system of SLAPP suits. This trend is contrary to the purpose of the board.

Ultimately, reform should encompass a view to significantly reducing the board's powers, which over time have broadened beyond the original intent, and a return to a truly democratic appeal process without inherent bias built in, which now precludes all parties from fully engaging in the process.

Regarding the PPS, we strongly support the change that decisions "shall be consistent with" policy statements issued under the act. "Shall be consistent with" is itself a compromise from the days of the Commission on Planning and Development Reform in Ontario between "have regard to" and "shall comply with." Frankly, "have regard to" has not worked.

However, we are concerned that the proposed PPS weakens protection for significant natural features. You will need to replace the wording "Natural heritage features and areas will be protected" from incompatible development because there is no development "compatible" with natural heritage features, including upland woodlots. Rather, the introductory statement should read: "Natural heritage features and areas, as well as water quality and quantity, will be protected."

Specific sections of the PPS to refine include section 2.1.2.1. Say: "Development shall be directed away from natural heritage features and areas." Section 2.1.2.2 also must be changed as it is even more lenient than the current PPS. For example, subsection (a) needs to add "vulnerable" as well as "endangered and threatened species" and include wording that would clearly state that municipalities shall protect locally significant wetlands.

While the PPS generally tries to strike a balance between competing interests and land uses, the province must unequivocally state that natural environment protection, particularly in urbanized areas of the province, is of provincial interest.

1350

On a personal note, when he was in opposition I met with the Premier and others at the Thames Valley District School Board's environmental education centre, and I was impressed by his commitment to the environment of Ontario.

We also look forward to policies to rein in urban sprawl and to provide support to public transit and to compact urban form and design. While it is a positive step to see a draft policy that says, in part, "direct new development to areas that will be served by transit," the policy should even be stronger to say there will be no

development in areas not presently served by transit if it cannot be demonstrated that transit service will be funded within three years of the start of development, this being in the urban context of Ontario.

The PPS should require urban intensification prior to the expansion of urban boundaries. One way to do that would be to require municipalities of a certain size with transit systems that carry over a threshold amount of riders to demonstrate how each approved plan of subdivision or larger land division is consistent with the PPS. Additionally, to help support growth-related capital costs of transit, you must also amend the Development Charges Act to eliminate the 10% discount on growth-related capital costs. Finally, be sure to have follow-ups on how the policies have been implemented, because a policy is only as good as the faithfulness with which it is implemented.

On the Planning Act, to get to compact urban form, the act must contain a minimum of these three elements: prohibit downzoning on transit corridors; have clear targets for intensification and infill that are achieved before a city can start a greenfield development, even within its urban boundary; and a requirement for maximum parking standards, as is the case in Calgary, not just minimum standards. This would assist in promoting transit use in cities, as there is a connection between long-term commuter-type parking and transit use.

For official plans, the act must set out specifics and broaden the content of official plans. It should be a requirement to have a public participation process, not just one meeting every five years, to review the policies and, more significantly, each municipality must demonstrate at that time how it has met the objectives of its OP and the PPS. Changes to an OP should be minimal between review periods, yet be subject to many amendments almost immediately after passage. For example, in the first five years of its OP in London, over 200 changes to its 1996 official plan were made. What about limiting the number of OP amendments a municipality can agree to in a year?

The consultation paper also asked, does the act and regulations regarding complete applications already require adequate information? Frankly, we say no. Applications end up at the board within a 90-day period now and will even if a 180-day period is implemented, if municipalities allow the clock to start before getting sufficient information, as a developer can go to the board and ask the board to decide the information they have provided is sufficient. An appeal to the board of a decision of a council not to accept an application because it is incomplete should not be allowed. Alternatively, the regulations need to spell out in greater detail what constitutes a completed application.

I could comment on the transition provisions, if you wish, but I want to leave time for questions.

Lastly, there are two other legislative changes to be made. The work to date mentions waste management, but because increase in waste is an output of growth, the Development Charges Act should be changed to allow a



calculated charge for the growth-related portion of waste management systems. Right now, nothing is allowed to be charged under the DC act. Also, a recommendation to make the Conservation Authorities Act more powerful and put provincial representatives back on the conservation authority boards is needed. They can be a key to protecting the natural heritage of this province.

Thank you for the time today, Mr Chair. With the remaining time, I'm open to any questions of your committee.

**The Chair:** We have seven minutes. The government side will start with questions.

**Mrs Van Bommel:** Thank you very much for your presentation. I'm glad you were able to join us through teleconference. You spoke at the beginning of your presentation about the issue of citizens appearing before the OMB and the costs of doing that. Earlier today, we had a presentation in which they spoke of things such as intervener funding. How would you feel about that type of approach to helping citizens come before the OMB?

**Mr Levin:** The Urban League and FUN would support that as well.

**The Chair:** Mrs Munro from the official opposition party.

**Mrs Munro:** I have no questions at this time, thank you.

**The Chair:** Ms Horwath.

**Ms Andrea Horwath (Hamilton East):** Thank you for giving me the opportunity. I apologize that I arrived halfway through your presentation. I'm from the city of Hamilton, and you'll know that our neighbourhoods are very involved with the FUN organization, so it's good to see that you've come to make the presentation.

I just wanted to follow up on the question previously asked. The official position of your organization is that if there is funding available for advocates like yourselves to attend the OMB, that would be something you would be fully in support of?

**Mr Levin:** Very much so.

**Ms Horwath:** Do you have any perspective on what kind of funding might be required? For example, funding simply for legal representation, or are you thinking of funding for professionals who might be giving advice on the matter, as well?

**Mr Levin:** Legal fees or professional expertise would both be appreciated. I can tell you that in one OMB matter I was involved in here in the city of London, the neighbourhood association ended up spending \$80,000, both for legal fees and professional help. Fortunately, it was a neighbourhood that could raise that kind of money. Unfortunately, not every neighbourhood across the province is like that.

So intervener funding would be most important, as well as an elimination, frankly, of slapping neighbourhood associations with costs if their appeal is legitimate. Certainly, frivolous and vexatious appeals are of concern, but none of the ones that we're familiar with would qualify, from our perspective, as being frivolous and vexatious.

**The Chair:** Thank you very much, Mr Levin.

**Mr Levin:** I appreciate the time.

**The Chair:** Again, we apologize for not being able to go down to London, because there were only three requests to appear in front of the committee. It's a lot less expensive to have you do it through a teleconference or video conference.

**Mr Levin:** I support the technology.

#### HENRY MALEC

**The Chair:** The next person we have is Henry Malec. Would you come forward and take a seat there, please? You will have 15 minutes, of which you can take the whole 15 minutes or leave some time at the end for questions from either of the three parties.

**Mr Henry Malec:** Thank you for this opportunity. I just wanted to give my experience with the Planning Act and perhaps a little bit about the OMB, from my perspective. I'm not a lawyer or a planner, but I'll tell you my story. Take from it what you will.

Several years ago, I asked that the property I owned be included within the urban boundary of a small Muskoka town. The town is Port Carling; it's not any big secret. Port Carling has approximately 700 people in its permanent population. It expands during the summertime to the summer population, so there's quite a difference. But the core of the town is 700 people. I asked for my property to be included during a boundary review of Port Carling. I thought I had a good case. Unfortunately, the municipality turned it down. I appealed it to the OMB, and there was an OMB hearing.

At the OMB hearing, I relied a great deal on the provincial policy statements. From my simplistic point of view and my engineering background, I thought that's where it all starts, with what you want to achieve, and we'll go from there. I agreed at that time with the compact urban form—everything in a compact, accessible form. I thought the standard of compactness was if you could walk there—in other words, can you walk to the post office, can you walk to the arena, can you walk to the community centre, all those communal types of activities? A small town like that is almost a perfect microcosm of a larger city.

To that end, I timed the distance it would be to walk from the included land into the centre of town. I timed how long it would take to drive into the centre of town from the included land. Even in Port Carling, believe it or not, I found out how fast a person could row—a typical rower—because Port Carling has a river flowing through it. That sounds like a film. Anyway, you could row into downtown Port Carling. I researched what a typical rower would row and I even gave the timing of rowing to downtown Port Carling. All these environmentally sensitive compact parameters, and the OMB chairman just ignored them. He dismissed my appeal for other reasons, but essentially I think he left the core of my argument on the table, where I had underlined compact form and walking and that kind of thing.



1400

I just wanted to say that I think the gold standard of compactness is walkability. I think that has to be emphasized in your principles. You say, "How far can a person walk?" I've talked to renowned architects and they have different ideas, but probably the best one I heard was, "If you can see it, you can walk there." You can't always see something because there are other barriers, but some kind of emphasis on the walkability of it.

So I wanted to say that and, secondly, that the OMB hearing was a hideous experience. One of the most hideous of them was a judge. Here he was, judging me against the municipality, and in the next room was his picture on the wall in the service of the municipality. In other words, the OMB board member who adjudicated this was once a member of the township of Muskoka Lakes. I think that's hideous. That just violates all standards of justice. I thought he was biased and, in subsequent events, in my own mind, thought he was biased.

I don't know how OMB members are chosen to adjudicate a dispute, but if the member chose that venue, then I think they should not be on the board and, if he was told to adjudicate that, then the methodology of selecting the member to hear a dispute should be reviewed; one of those two, because that was a terrible experience.

I talk rather fast, don't I? That's really the core of what I wanted to tell you, so I'm not going to embellish it any more. If you want me to answer any questions—

**The Chair:** Yes, Mr Malec, we still have 10 minutes. I'm going to ask the official opposition if they have any questions.

**Mrs Munro:** I appreciate your personal experience because, if you've had the opportunity to hear many of the presenters, not many have been able to come forward with the kind of personal experience that you have. I wondered if you could offer some further advice in terms of this particular piece of legislation.

I certainly understand your notion of including walkability as a determinant in density. But one of the issues that earlier presenters have raised is the question of trying to balance what sometimes appear to be opposing influences of environment, economic development and social issues around planning. In your experience, you thought that you had a piece of property that would fit with that, but I wonder if you could give us any advice on the issue of those provincial policy statements and the way in which that balance can be struck.

**Mr Malec:** I looked at the draft policy, I read it over, looking for walkability or walking being emphasized. I don't think it's emphasized enough. I'll just put a very broad answer to that. I had to sort of dig through it and look under definitions and all that kind of thing to find out that walking is important, but it's only sort of one of many. I realize you can't always do that in a city like Toronto, for example. It's not as easy. But in Port Carling, with 700 people, it's easy to look at it. You say, "Well, if there are 700 people there, they should all be within the urban boundary and able to walk."

Instead, when things are developer-driven—Port Carling is all bent out of shape, the urban boundaries. There are places where it takes three quarters of an hour to walk in because people want to build a resort there or a golf course there. By the way, there's a major resort and a golf course located within the urban limits of Port Carling—and 700 people. So they're not following this at all. It's developer-driven. I don't know except that I would, to answer your question, try to find walkability in here, and I've had to work at it.

**Mrs Munro:** Yes, I appreciate that. I can also appreciate that in a lot of research done in terms of community viability, that's certainly one of the features. The issue is around density and things like that. So I certainly take your advice on the need to ensure that there's greater recognition of that particular component. Thank you.

**Ms Horwath:** I was interested in your experience as well, and I thank you for coming to share it with us. I'm wondering if you have any opinion as to whether you think the OMB should even exist. There are some people who believe the OMB should simply be abolished and it should be taken completely out of the process. Do you have any comments on that?

**Mr Malec:** No. I appreciate the fact that I—little old me—could challenge what I thought was not correct. So I appreciate that. At the OMB hearing, however, there was little old me and two lawyers on the other side—not one, but two: the township lawyer and the district of Muskoka, the regional, lawyer. So they were both there. They can swamp you with legalities and those kind of things. You're just a normal, logical person in the point you're making and, by the procedural ways, they can sort of deny it or whatever. It's very frustrating. I would love it if there were no lawyers involved; in other words, just the township planner saying his piece, and I said my piece, with no lawyers involved. That would be better.

But to answer your question, I appreciate the fact that there is an OMB. I just think it needs a bit of jiggling.

**Ms Horwath:** One of the other things that has come up in these discussions is the fact that the legislation may come into effect prior to the provincial policy statement being updated. Is that a concern of yours? I think when you look at some of the concerns you talked about, about walkability and those kinds of things, the provincial policy statement would theoretically put all that in place and put that together and make those references quite clear. There has been some concern that the legislation may come forward and be passed without having an updated provincial policy statement. Do you have any thoughts on that?

**Mr Malec:** I don't think I would like that; let me put it that way. My first impression—I'm not a lawyer and don't know how it all works, but I would think, if this is the core of it, as I said before, it should be incorporated into the Planning Act, very strongly. That would be my first impression.

**The Chair:** We'll move on to the government side.

1410

**Mrs Van Bommel:** Thank you for telling us about your personal experiences with the OMB. You men-



tioned earlier in your presentation your own experience with arguing the provincial policy statements. I got the impression from you that you didn't feel that the OMB heard that very well. Is there any way that we could ensure that the OMB better implements provincial policy statements in their decisions?

**Mr Malec:** The impression I got was, "So what?" When I presented my little policy statements at that time, it was, "Next," that kind of thing; whether it was simply the member himself or contempt for the provincial policy being too weak or something like that, I don't know. I don't know how to do that except to make them aware. I suppose that that's where the core of it all is. That's what we're trying to achieve in this province, what the policy says, so you listen and make note of it.

**The Chair:** Thank you, Mr Malec, for taking the time. We appreciate you very much.

**Mr Malec:** Thank you.

#### LONDON DEVELOPMENT INSTITUTE

#### LONDON HOME BUILDERS' ASSOCIATION

**The Chair:** The next group is going to be the London Development Institute and London Home Builders' Association. It's going to be done by video conference again.

Welcome to the public hearing on Bill 26, An Act to amend the Planning Act. Would you state your name and position for recording purposes?

**Mr Steve Janes:** Thank you very much, Mr Chairman. My name is Steve Janes. I'm president of the London Development Institute, and I'm also speaking on behalf of the London Home Builders' Association. My background is in civil engineering and in regional planning.

I have some comments to make. I understand that the committee heard from Peter Saturno earlier on today and that during Mr Saturno's presentation you received copies of the reports that were produced by the Ontario Home Builders' Association.

My presentation will be quite brief. I just simply want to highlight some points. We have had input, both organizations, on the preparation of these three discussion papers. There's a third paper dealing with housing issues which is not before us today, but the three papers that are before you, we have had input into them, and we fully support the presentation positions.

I simply want to raise a couple of points in the paper Planning Reform: Provincial Policy Statement: Draft Policies. On page 3 there is a recommendation. I make the comment that we here in southwestern Ontario, particularly in the larger city, London, and in the smaller communities, are concerned that the policies that are appropriate for the GTA may not be appropriate for rural areas, smaller urban areas, and certainly not for cottage country or for northern Ontario. We think that the policy suggestion raised in the OHBA brief on page 3 warrants your serious consideration. I'll read it for the committee's

benefit. "We recommend that the provincial policy statements be separated so as to address growth within the GTA and the larger cities and to address the development of the rural communities and the small towns of Ontario, yet maintaining their character. Perhaps a second set of provincial policy statements should be written to address growth within the smaller communities."

The review that we've undertaken and the discussions we've had have raised topics such as the town of Strathroy, the town of St Mary's, the smaller cities like St Thomas or Woodstock or Stratford, and the problems that they face are not the same problems you face in the GTA. We think special consideration should be given to how you will deal with their problems.

The second point that occurs on page 4 of the same report—I want to bring the city of London into this one. We have a major concern with the proposed shift in interpretation of the provincial policy from "shall have regard to" to "shall be consistent with." We strongly urge that the current wording of the Planning Act be retained to reflect that planning authorities shall have regard for provincial policy statements.

Most of you, I'm sure, have been in London or passed London. You will know that on the south side of London we have Highways 401 and 402. They are, for the most part, for the passerby, in rural countryside, but they are within the urban limits of the city of London. The city of London, with the support of the provincial government and the adjacent municipalities, has linked the water systems from Lake Erie to Lake Huron and is, as we talk today, in the process of initiating what we term the southeast reservoir and pumping station, which would be located in the southeasterly area that I'm referring to, along the 401. In addition to that, the city has embarked on long-range planning for a sewage treatment plant on the Dingman, which is south and west of Lambeth, just off 402 and 401.

The point I'm raising with respect to this policy shift is that the lands that I'm referring to are within the urban growth boundary limit of the city of London. To follow the current proposals for the provincial policy statement would cause the city to have to re-examine its official plan, change the community planning approach and alter its master plans for servicing, and this area is urbanizing. We have storm water management planning policies being developed for the area. It would be an extraordinarily difficult situation for the city of London to not proceed with the development of the 401-402 corridor.

We feel very strongly about that and feel that this particular interpretation should be flexible to allow for the input from the local planning authority, from other agencies that have been involved, as opposed to "being consistent with."

The last point I have is dealing with the Ontario Municipal Board reform, and that's in discussion paper 3. We fully support two points, one being the five-year minimum term. My experience—and I've appeared before the board on many, many occasions—is that the



board members have served this province well. I can't recall of a board member whom I have questioned qualifications for, but I do believe that it's necessary to maintain continuity, and certainly a longer term in the office would be appropriate. We also feel very strongly that mediation ought to be advanced and seriously developed as part of the board's procedures. I am currently involved in two major mediation matters that are before the Ontario Municipal Board. The municipal board has indicated the wish to proceed in this direction and we in the development industry are supporting that. We're quite prepared to sit down and work along with our partners—the city of London—to resolve the issues.

Mr Chairman, that's the end of my submission. I wanted to try and make it very brief. In closing, thanks again. We do support the positions that have been advanced in these documents prepared by the OHBA. I think you're on the right course. I'm delighted that the province has taken this initiative. It's overdue. Keep on with the good work. Thank you.

**The Chair:** Thank you, Mr Janes. We have nine minutes left, and we are going to proceed with questions from the NDP.

**Ms Horwath:** Good afternoon, Mr Janes. I'm wondering if you have any comments on the perception that has been raised several times about the OMB, as it sits now, favouring the development industry when it comes to its decisions. There's a sense from many presenters, mostly people from community neighbourhoods, environmentalists, those kinds of people, saying that the OMB is problematic because it favours the development industry. Has that been your experience coming from the development industry? Do you feel that there is any favouritism being shown to people like yourself and those you advocate for?

1420

**Mr Janes:** My experience has not been that the board has favoured the industry particularly. I think the matters that cause the concerns the public have been raising have been situations where there has been a clear policy enunciated by the council in the official plan or in the zoning bylaw and, for whatever reason, there is a position being initiated—possibly by council, possibly by public input—to not make a decision or to defer to a later date or to make a decision that is not consistent with the written word.

From the industry standpoint, our concern is that you need to have some stability in the documentation and its interpretation. I've found that the board members at the OMB have been very consistent in their dealings with the interpretation of the official plan, zoning bylaws and any other environmental policy position. So I don't think this is an issue. It may be an issue of frustration that public groups don't necessarily see their way being adopted or enacted by a board decision.

**Ms Horwath:** Wouldn't you say, though, that clearing up the language and having it more succinct in terms of having the wording that is speaking to the issue you raised around having "regard for," as opposed to being

"consistent with"—it seems to me the wording "consistent with" is a lot more clear and would probably clarify the concerns that have been raised by those very people. It seems to me that that's a bit of the crux of the issue in regard to whether things are interpreted one way or another. "Consistent with" is a lot more clear, as opposed to "regard for," which is a bit fuzzy and not quite black and white, as I think you said yourself.

**Mr Janes:** There is a considerable amount of attention spent discussing this in the documents we have. But the planning authorities in a particular area—a municipality or county—have the ability to interpret. If you have provincial planning policies that cannot be interpreted and must be followed to the letter, then what's the role of the planning authority? Taking the example I provided you with of the 401-402 corridor, we would have a major problem in London. Our municipal council and the planning committee have all made decisions based upon their interpretation of the provincial planning policies that have led to the creation of the infrastructure I spoke of. To have that reversed by "be consistent with" would, I think, cause untold discomfort, cost and all the rest to the city.

**The Chair:** We'll move to the government side.

**Ms Matthews:** Hello. I wish we were in London, but it's nice to have you with us by video conference.

I want to pick up on a comment you made, that there should be a separate PPS for communities that are not rapidly growing. I wonder if you could talk about that a little bit and maybe explain how that would make a difference for a community like London.

**Mr Janes:** Thank you very much. The weather is excellent down here. We miss you. We wish you were here.

**Ms Matthews:** Thank you very much.

**Mr Janes:** In London, as you know, we have development across the north of the city that is literally reaching out to the limits of the city. The example I gave was the southern boundary, where there is considerable expansion potential, in an urbanization sense, all the way down to the Elgin county boundary. Our concern is that forcing a resolution—I'll use my words for the moment as opposed to the planning policy words—of the intensification and redevelopment of lands that might be deemed to be available for urbanization takes time. In fact, many of those lands may not be developable at all. In London we're talking about railway corridor lands, and in St Thomas we're talking about railway corridor lands, all of which require extensive remediation to clear the lands so you can develop and occupy them. If we were withheld from developing in the remaining areas already identified by the city for urban growth potential and compelled to satisfy provincial planning policy statements that intensification must be satisfied before we can proceed, we would have a major problem in London.

As you know, the corridor lands we have—we simply don't have the available land in the centre of the city for intensification, and it may not be available, either because it isn't for sale or it has environmental problems.



**The Chair:** I'll move on to the official opposition.

**Mr Yakabuski:** I believe your counterpart from the Ontario Home Builders' Association addressed how the retroactive provisions of this amendment would affect ongoing or previously approved or changes made by municipalities or permits granted etc. I'm not sure if you talked about it in your submission; I may have missed it. What is your position on the retroactive provisions of this bill, going back to, I think December 13, 2003? The bill is being deemed as enacted on December 13, 2003.

**Mr Janes:** I'm not sure I get your question.

**Mr Yakabuski:** Anything that has already been determined by municipalities, or they've granted permits or whatever based on the legislation as it existed, or exists—if this bill is passed, it will be deemed to have come into effect on December 13, 2003, which would have a retroactive effect on anything that is already done.

One of the concerns he talked about was municipalities actually being held almost like they're in limbo at this point. They don't want to proceed with certain things because they're concerned about the retroactive provisions of this bill.

**Mr Janes:** I have a major problem with that, going back to the specific example I was providing the committee with. We have the Dingman watershed running along the 401 corridor. The city is in the process of what we call a subwatershed study to determine how the watershed management will be developed within the city. All of this is in front of us. The studies which have been undertaken close to that date have not yet been adopted by council. We would have to reverse all the public review and go back in time. I think it would cause not only a major delay in terms of the city's implementation of capital works but of any industry responses in terms of development of the lands made possible by the new services.

**Mr Yakabuski:** I have one other question that I'd like to get your input on. We've had submissions from other parties here saying, for example, that they should have intervenor status at these hearings and also that their legal costs should be funded. I wonder how you feel about that. Would that simply protract these exercises more, or do you think that's a reasonable position on their part? That's community groups, environmentalists, etc.

**Mr Janes:** I think that's a difficult question to answer. There have been many situations where the intervention, the appeal, is of a frivolous nature. We think the board ought to have the ability to screen that to determine whether there is merit. If there is merit, quite frankly, I don't think we would be averse to there being some way to compensate the parties who make an appeal. This already is possible through certain environmental jurisdictions. I think that might not be a bad idea.

**The Chair:** Thank you once again for having this done through a video conference. We would have loved to be in London, but it would have been very costly to move 18 people for three appearances.

**Mr Janes:** Deb Matthews, thank you.

1430

## PEMBINA INSTITUTE

**The Chair:** The next one we have is Mark Winfield, director of environmental governance, Pembina Institute.

**Dr Mark Winfield:** Thank you, Mr Chairman. My name is Mark Winfield. I'm the director of the environmental governance program with the Pembina Institute, which is a national, independent, not-for-profit environmental and energy policy research and education organization. It was founded in 1984, and we now have offices in Toronto; Ottawa; Calgary; Edmonton; Drayton Valley, Alberta, and Vancouver.

The institute has taken a strong interest in issues related to the environmental, economic and social sustainability of urban communities in Ontario over the past two years and has published a number of major reports on these, which are available on our Web site.

The institute welcomes the introduction of Bill 26 as an important step toward the reform of the land use planning process to curb urban sprawl, promote more sustainable urban communities and strengthen local democracy. The institute's specific comments on the bill are as follows.

With respect to section 2, the consistency with provincial policy of planning decisions, we are strongly encouraged by this provision, which would provide that advice and planning decisions by municipal councils, provincial agencies and the Ontario Municipal Board be consistent with policy statements issued under the Planning Act by the Minister of Municipal Affairs. In our view, the adoption of these amendments is essential to the provincial government's ability to provide policy direction to planning authorities needed to curb urban sprawl and promote more sustainable development patterns. At the same time, the institute emphasizes that it is essential that the revised provincial policy statement now being developed by the Minister of Municipal Affairs be in place before the proclamation in force of this section of Bill 26. Unfortunately, if the existing PPS remains in place when Bill 26 is proclaimed, it would have the perverse effect of requiring that planning authorities ensure that their planning decisions be consistent with policies that are often too vague to provide meaningful policy direction or that in some cases have actually been major factors in the promotion of urban sprawl over the past seven years. We're recommending that the bill be amended such that section 2 comes into force on a date to be proclaimed by the Lieutenant Governor in Council.

With respect to sections 3 and 4, we note that Bill 26 would make a number of modifications to the OMB appeal process, increasing the time period for making decisions before appeals can be made to the board. The right of appeal to the board with respect to official plan amendments and zoning bylaws would be eliminated if the amendment relates to the alteration of the boundary



of an urban settlement area or the creation of such an area.

These provisions, in our view, are a good first step toward the reform of the OMB appeal process, providing planning authorities with a greater period of time to consider decisions before proponents can initiate appeals to the board and eliminating the right of appeal in situations where municipalities might be compelled to expand urban settlement areas against their wishes. In addition, in our view, appeals of official plan amendments should not be permitted until final decisions on these matters have been made by the councils involved. This would have the effect of reinforcing the central role of the official plan in the planning process.

Another aspect of the OMB appeal issue that needs to be addressed is the question of the triggers for the time frames for the appeal process. In many cases, proponents have provided only minimal information to municipal councils in support of applications, thereby triggering the time frames for appeal, and then have introduced additional information at the OMB appeal stage. As noted in the government's discussion paper on planning reform, such an approach does not give municipalities an opportunity to obtain information that may be needed to properly assess applications in terms of such things as traffic, hydrogeology and natural heritage impact before an appeal to the OMB can be initiated.

To address this problem, we're recommending that Bill 26 amend the Planning Act to provide for definition of a "complete application" for planning approvals and that the time frames for automatic appeals to the OMB only be triggered once an application is deemed to be complete. We're recommending specifically that a complete application would include the information prescribed in regulation, as is the case now, but also such additional information as a municipality might lay out in its official plan or a bylaw with respect to certain types of applications; any information necessary to meet the requirements of the provincial policy statement; and then any additional information that the municipality might reasonably deem necessary to assess the application.

Finally, on the issue of transitional issues, our position, given that the bill was introduced in December and that the government was quite clear on its direction at that time, is that, except in situations where final approvals have come into place in the intervening period, approvals that are in process should be dealt with on the basis of the rules as established by Bill 26 if it's enacted.

I'd be happy to take any questions.

**The Chair:** Thank you. We have nearly 10 minutes left, and it is up to the government side now. Any questions?

**Mrs Van Bommel:** Thank you for your presentation here today. I'm particularly interested in your recommendation around the definition of "complete application" standards that are set out. What additional standards would you foresee a municipality being able to add to that list that would define a complete application?

**Dr Winfield:** At the moment, the definition is through regulation. If you look at the regulation, essentially

what's there is what you might describe as the tombstone information on an application. It's literally who's making the application, what's their address and what's the wording, for example, of an amendment to the official plan that they're asking for. That's all there is. That then triggers the timelines for automatic rights of appeal to the OMB. What we're saying is that that needs to be broadened out, that the municipality needs to be given a bit more room basically to be able to go back to the proponent and say, "Look, we need some additional information here to be able to make some sort of meaningful assessment of what you're proposing."

In some cases, there are specific things that are required in relation to the provincial policy statement around wetlands, for example, or woodlands, where certain types of studies need to have been completed before decisions could reasonably be made. There's a possibility you might just write into the official plan rules that say that if somebody applies for a certain type of thing, they would need to provide this additional information.

We also thought that it would be appropriate to have a general provision that can ask for other information they deem necessary to assess the application. We've suggested putting the word "reasonable" in there so there's a reasonableness test. It means they can't go on a fishing expedition or they can't simply delay the application by asking for endless amounts of information but, at the same time, it gives some opportunity so that the municipality has some chance to make sure that it has a reasonably complete file in front of it when council tries to consider the application. I think what we need to try to put an end to is this practice of skeleton applications going in, the timeline running out because the municipality just hasn't had time to assess or doesn't have the information, the proponent goes to the OMB and then provides a whole mass of additional information that council never had the benefit of seeing. I think that just doesn't encourage good decision-making at the municipal level, and therefore we think this would be a good way of trying to get at that problem.

**Mrs Van Bommel:** Do you think that there should be a limit to what a municipality can ask for in terms of complete application, so that you would have some consistency across the province in terms of what anyone coming forward with an application would be expected to provide, or would you see that some municipalities might be more friendly to applications than others?

**Dr Winfield:** I think one needs to have a combination of specific items that would reasonably be required, be they what's in regulation from the province or things that relate to the PPS. But I think we also need to leave municipalities with a little bit of room in terms of asking for extra information, because every application is going to be different. It's going to be impossible to anticipate, before the application is made, what sorts of information you might need in relation to it. We're suggesting then that they be limited by a reasonableness test. It can't be anything; it can't be open-ended. Indeed, one might



envision a process through which you might even have a very short appeal process to the OMB. If a proponent says, "This is an unreasonable request from the municipality," it's conceivable you could have the OMB do a summary hearing just very quickly and say, "Yes, this is off the scale," or "No, this is quite reasonable." Given the type of application this is, it's quite reasonable for the municipality to ask for information on traffic impacts, groundwater protection or whatever it might be.

**Mrs Munro:** I want to ask you a couple of questions with regard to the recommendation that you have as number five on page 3. There you suggest that the minister be required to provide an explanation of how the provincial interest would be adversely affected. It's certainly something that I also thought was worthy of further work. I wondered if you would also support the notion of needing a definition of what is the provincial interest.

1440

**Dr Winfield:** I think that would not be unhelpful. I think, though, again, one is faced with this problem that you can't at this stage anticipate all circumstances. And so one may want to leave a certain amount of openness there and, if one were wording it, you might provide some examples and then perhaps a general public interest clause as well that says other things that seem to be in the public interest. I think you've then bounded it exactly by requiring that there be some explanation as to why this is seen to be a provincial interest or in the public interest. I think that would put some sort of a boundary around it so it's not completely arbitrary. There has to be some rationale presented by the minister for why he or she is doing something.

**Mrs Munro:** Yes, and in keeping with that, I wondered too in terms of what kind of process you would see as being appropriate, because obviously he has to have a forum for providing this explanation. I guess two ideas had crossed my mind. Would it come, in your view, to be appropriate as a hearing kind of exercise? Is this something that you put on-line? What ideas have you on that?

**Dr Winfield:** I think it clearly needs to be a formal statement from the minister. It can't be a press release. It needs to be something more than that.

I think the best way to approach it, and because these things can move quickly, would probably be to link it back to the Environmental Bill of Rights and actually declare the issuance of such a declaration, which we technically should classify as an instrument under the EBR. So you would then actually have to post it on-line and give people an opportunity to comment on it.

There are provisions in the Environmental Bill of Rights where, if it's an absolute emergency, it's still posted and with a shorter time period. But I think that's probably the most efficient way of getting at it. Then you would conceivably still have an OMB hearing at which the evidence could be canvassed. What it's saying, though, is that at the end of the day, it will be the cabinet

that makes the decision rather than the OMB, or at least it may decide to substitute its own decision.

At the end of the day, I think we can live with that in the sense that I suspect it would be rare when that would happen, and it does provide for political accountability. It means that the cabinet has to go on the record very clearly as to, "Here's where we've come down on this," and that provides a very clear line of accountability.

**Mrs Munro:** Thank you.

**Ms Churley:** That seems to make sense. Thank you for your clarity once again. It's always very helpful. I know you do good work and get to the nub of the matter. You're saying what we're saying, that we support the general direction of this bill.

I made a joke this morning that it's kind of like fashion. Fashion makes a comeback every now and then, and we're having the concepts from the NDP's early 1990s Green Planning Act coming back to us today. There's quite a bit of that in this, especially the "be consistent with" as opposed to "have regard for," that is really important.

Having said that, I wanted to ask you—and I do support your recommendations for amendments, and we'll be putting those forward. All of the things that have been happening lately around the approval of the big pipe, the homes built on the Oak Ridges moraine, more factory farms, all of these other arms and pieces of legislation through other ministries that are having—for instance, the Ministry of Agriculture recently appealed a decision by municipalities to stop a big pig farm, on the basis, they said, that it went against their provincial policy to disallow this pig farm from being built there. So that seems to contradict what we're trying to say in this bill.

I'm just wondering what your opinion is in terms of all of these pieces coming together once the new planning policy is in place and this bill is enacted. Do you think that'll make a difference in terms of these kinds of things happening within different ministries?

**Dr Winfield:** I think it will be helpful in the sense that the "be consistent with" language applies to provincial agencies as well as—

**Ms Churley:** And ministries?

**Dr Winfield:** And ministries and agencies. In fact, it probably has the effect of, at least for land use planning purposes, really sort of reinforcing the provincial policy statement as the central node, the place where the provincial statement is, if you like, definitive. I think that would probably be helpful in terms of the air traffic control problem.

There are other things, though, that I think the government will need to deal with. One of the problems that does exist now is that there are, under the Planning Act, more broadly, some limitations on the ability of ministries like environment and natural resources to initiate OMB appeals as well. I think there are places where in fact you may want to open the door to that. The obvious one is with the Ministry of the Environment and source water protection. I think you very clearly want a



circumstance where the ministry is going to be able to appeal planning decisions to the OMB if it sees them as being inconsistent with source water protection plans.

**Ms Churley:** Time up?

**The Chair:** Thank you, Ms Munro. Thank you, Mr Winfield, for taking the time and telling us about your concerns.

The next group—

**Ms Churley:** For the record, you thanked Ms Munro, not Ms Churley.

**The Chair:** I'm sorry.

**Ms Churley:** That's OK. That's just for the record.

**The Chair:** Well done.

#### OTTAWA-CARLETON HOME BUILDERS' ASSOCIATION

**The Chair:** The next group is the Ottawa-Carleton Home Builders' Association. It's going to be done by video conference. Distance is not an impediment any more; it brings us closer in a very short while. We have at the other end Mr John Herbert. You have 15 minutes to make your presentation. If you take the whole 15 minutes, then there will be no time left for question period, so it is up to you to decide. You can proceed.

**Mr John Herbert:** Thank you, Mr Chairman. First of all, I wish I had one of these television screens in my home.

I'd like to thank you for taking the time to listen to some of our concerns and comments today. I'd like to just go back a little bit and talk about the process. We think one of the primary weaknesses has been the lack of any problem identification or problem definition in the documents that have been provided by the ministry. There has been no discussion about the problems or issues that have been identified. As I'm sure you all know, our members and their various consultants are one of the primary users of the planning system at all levels. Although there are many changes that we would like to see, we're not aware of any problems that justify the degree or type of change being proposed.

The discussion papers only offered some vague statements, such as, "The Ontario government recognizes that our current planning system needs to be improved," or "Over the past years, there has been a growing perception that the Ontario land use planning system has not been working as effectively as it should." We would certainly like to know a little more about who it is that has this perception because none of the main users that we've spoken to are aware of it.

We believe it's important for all stakeholders to understand why the government believes the planning system needs to be changed so that all parties involved can agree on effective solutions. Only after having a complete debate on the nature of the problems that may or may not exist can the general public, industry and government work together to formulate appropriate solutions. The way things now stand, we're being presented with a wide range of changes under vague statements such as "build-

ing strong communities." Government and industry have been working together for decades to achieve this very objective, and we appear to have met with significant success. Certainly, any system can be improved, especially when dealing with something as dynamic as urban growth; however, the extensive changes being proposed imply serious problems where none are currently apparent. All of this naturally begs the question as to why it's happening and whether the province is in the process of throwing the baby out with the bathwater.

We would like to propose that the province suspend the current planning reform process until it can formulate a problem description and facilitate a comprehensive discussion and consensus-building exercise before proceeding to identify potential changes to the policy statement, the Planning Act or the Ontario Municipal Board.

Obviously, we don't have time to go into any real detail here today, but I've provided a more comprehensive paper to the ministry as well as to your committee that does provide more information. But generally speaking, we believe that if the changes being proposed are adopted, they will reduce the quality of planning decisions in Ontario, increase pollution and housing costs, undermine the primary economic engine in our economy and reduce the quality of life across the province. I'd like to just briefly elaborate on each of those statements.

#### 1450

We believe the quality of planning decisions will be reduced because the changes will transfer substantial authority from professionally trained land use and planning experts to political decision-making bodies at the municipal and provincial levels.

We know that pollution will grow as a result of increases in traffic congestion resulting from smart growth policies which will be reinforced by the proposed planning reforms.

Disproportionate amounts of transportation funds will be spent on light rail experiments that will not reduce automobile use but will reduce implementation of effective solutions such as busing and new road construction.

The combined effect of these factors will be increased traffic congestion and more pollution. Statistical data from the few American cities that have experimented with this form of growth confirm these causes and effects.

If municipal government is granted the right to unilaterally restrict urban boundary expansions, it will create a supply-demand imbalance that will increase the cost of serviced land to unprecedented levels and put home ownership beyond the reach of most young families.

The city of Ottawa adopted this approach in its new official plan a little over a year ago. The price of land within the urban boundary has since increased by over 40%.

It's also of concern for us to note that since 1997 housing prices in Ottawa have increased 43%, which is more than any other city in Canada.



During 2003, residential construction contributed 5.4% to the total provincial GDP, the highest of any sector in the province. We believe that this will decline rapidly if the proposed changes are implemented. Our economy and quality of life will slip as homes are no longer affordable and sales rapidly decline. Thousands of related jobs will be lost. Provincial and municipal revenues will decline. Starter homes for young couples will become condominiums instead of townhomes.

That concludes our brief presentation for today. I'd be pleased to try to answer any questions that committee members might have.

**The Chair:** Thank you, Mr Herbert. We have eight minutes left. It is up to the official opposition party to start with questions.

**Mrs Munro:** Thank you very much for being able to join us here this afternoon, if only through video.

I understand the point that you have made about concern over the government making a case for this issue, but there are a couple of areas with regard to this specific legislation which is before us that I wondered if you would care to comment on.

We've certainly heard some recurring themes. You mentioned the importance in terms of the economic value of your industry and, frankly, how it contributes to the lifestyle of many thousands of people. We also are aware that there is an undertaking by the government at this point to look at the review of the provincial policy statements.

I wondered if you'd care to talk for a moment about their important role in the planning process and in the process that we're looking at specifically in this piece of legislation, and what that possible outcome is for an industry such as yours.

**Mr Herbert:** With regard to the provincial policy statement, I think that one of the main concerns for us revolves around the issue of the difference between "having regard to" and "being consistent with." We believe that the notion of it "being consistent with" will reduce any OMB or other planning authority's flexibility to recognize the diversity that exists in this province and to make the best planning decisions possible under those circumstances. We believe that "being consistent with" is trying to put a square peg in a round hole, so to speak, in that it just does not provide the flexibility which "having regard to" does.

So, with respect to those sorts of comments, I think the impact of that will be to slow approvals even further, which adds cost to our product, which adds expense to homes and financial burdens on individuals. It is one of small matters that will cumulatively affect the ability of people to purchase new homes.

**Mrs Munro:** Someone earlier in the day suggested that because of the diversity within our communities across the province there should be differences in the policy statements that would be geographically determined. Do you think this would help in terms of the kinds of issues we're dealing with regarding policy statements? In other words, we're going to have not one-size-

fits-all but one for small communities, one for larger communities etc.

**Mr Herbert:** I think that would definitely be a step in the right direction. You could go two ways. You could either take that approach or provide the flexibility within the system for each of those areas to be recognized individually and their idiosyncrasies dealt with. The notion of trying to establish a hierarchy of factors for various municipalities, whether they be small rural or large metropolitan, is certainly better than the one-size-fits-all approach that appears to be being considered right now.

**The Chair:** We'll move to Ms Horwath from the third party.

**Ms Horwath:** I only have one question, and that is, I understand your perspective in terms of, from what you've said, not thinking there is actually a problem and therefore not seeing why this needs to come forward at this point. I wanted to ask you the specific question about the retroactivity being written into the bill. There are others who have commented on that. I believe it's retroactive until December 2003. I didn't hear you mention anything about that. I wonder if you could share with us any comments you might have about the retroactivity of the bill.

**Mr Herbert:** We believe that would be a serious mistake in that it would result in tremendous cost increases to proponents who have dealt in good faith with the existing processes. We believe the government would be making a very big mistake in doing such unilaterally and that it would result in dramatic cost increases, certainly around Ottawa, for housing and for consumers. We are opposed to any retroactivity.

**The Chair:** Thank you, Ms Horwath. Ms Van Bommel.

**Mrs Van Bommel:** In your opening comments, you say that you feel there is a wide range of changes that have not been identified as needed, yet from the government we have heard a great deal of concern about planning issues. Are you suggesting that government should continue with the status quo? How would you suggest we deal with the loss of primary agricultural land, gridlock and issues such as those?

**Mr Herbert:** A good question. I guess what I would suggest is that we consider more of a public-private partnership in dealing with important issues such as these. It's our perception that the province is responding to pressure from municipal politicians. We don't believe that our industry has been involved in any meaningful way, shape or form through this process, and we think that more effective solutions for all could be achieved if industry were consulted more appropriately. So far, this appears to have been a government-driven exercise, municipal and provincial, and the private sector really has not had any significant input; there has not been any consultation, really, whatsoever.

**Mrs Van Bommel:** Could you give me your thoughts on issues such as intensification? You talk about the cost of housing increasing. What do you feel would be the impact of intensification on that cost?



**Mr Herbert:** We believe it's going to have very significant cost implications for housing, at least in Ottawa. Again, it depends on the municipalities across the province. There are some municipalities that have vast amounts of land within their existing urban boundaries so the impact on them will not be significant. In Ottawa, we have very little land within our existing urban boundaries, so the impact on us will be great.

1500

The effects of intensification are fairly well known because the cities in the United States that have undertaken this form of growth have been studied now for about 15 years. We know that it's going to increase housing prices dramatically. We know that it will result in increased traffic congestion and generally a lower quality of life for residents.

This is a difficult issue that I wish we had more time to discuss so that I could elaborate on some of the details that comprise this difficult equation.

**The Chair:** Thank you, Mr Herbert. Our time is up. As you can see, with the new technology, distance is not a barrier, even though you are 450 kilometres from here. It's nice to voice your opinion and your concern on this issue. Thank you.

The next one we have is another video conference, Alayne McGregor. Would Ms McGregor be in Ottawa for the video conference?

**Mr Herbert:** There's nobody at this table, Mr Chairman.

**The Chair:** Very good, thank you. We have another one from the Green Party, Mr Raphaël Thierren.

**Mr Herbert:** Mr Chairman, I do have Alayne McGregor here.

ALAYNE MCGREGOR

**The Chair:** Good afternoon, Ms McGregor, and welcome to our public hearing on Bill 26, An Act to amend the Planning Act. You have 15 minutes. You can take the whole 15 minutes or leave some time at the end for questions from the three parties.

**Ms Alayne McGregor:** Thank you very much, sir. I'm speaking today as a community activist. I've been involved with commenting on a number of different official plans including, for example, the very latest city of Ottawa official plan and a number of the previous city of Ottawa plans. From those, and having talked to similar activists and community persons, we were deeply concerned at times that the Ontario Municipal Board wasn't reflecting the interests or needs of the community. Therefore, when I saw this hearing on Bill 26, I reviewed the contents of Bill 26 and I was quite favourably impressed. So I wanted to come today primarily to support the provisions in this bill, with the hope, though, that there will be further work, which I understand is happening, on the role of the Ontario Municipal Board.

I think it's important that we have a review board, if only to ensure that there is an independent review, that a city's official plan is internally consistent and that it's

consistent with provincial policy, both the environmental law and planning law. Therefore it is important to have this. However, I think this is a good start.

I sent you a brief about half an hour ago. I don't know whether you actually received it but it should be in the e-mail. I'm going from the précis that was at the bottom of the description of the bill rather than the bill itself because that was easier to describe. In terms of changing to "consistent with" rather than "have regard to," I think that's an excellent idea because it's important that we have an overall planning vision for the province, and the current wording, "have regard to," is simply far too vague. However, it's not clear here what these "statements" from the minister include. It is primarily interpretations of the Planning Act, overall government policy, cabinet decisions or ad hoc statements. I hope this means that such decisions, both by the OMB and by city council, would be in view of preserving the environment, reducing sprawl and avoiding the loss of farmland and aggregate resources, all policy directions that have been supported in provincial policies.

Further, I support increasing the time period for making decisions before appeals. I support removing the deadline of 65 days for the public meetings. I think both of those allow more time for getting a rapprochement between city staff and developers or other people who need to work with this. I think it's important that we don't make appealing to the OMB a normal practice. We should give enough time so that it's not required to have appeals to the OMB as a normal practice.

I wanted to strongly support eliminating the right to appeal to the OMB if the amendment relates to the alteration of the urban boundary, because I think that in particular is a decision that's very clear-cut. It's a decision by city council and by the community that should not be overridden by an unelected body. Therefore, in particular, I am very strongly in support of this particular provision. I do hope it goes through.

I think Bill 26 is an excellent first step. I hope it's followed by a further review of the role of the Ontario Municipal Board, simply to ensure that we address community concerns that the OMB is difficult to access by the community and requires excessive amounts of money and time for ordinary people to make an appeal. Thank you very much.

**The Chair:** Thank you very much. We have at the present time nine minutes left, which is going to be divided among the three parties, three minutes each.

**Ms Horwath:** I was really interested to hear your comments. We too are very supportive of the direction the government is taking, although we will likely be submitting some amendments. This is very reflective of some of the legislation that we brought forward in the early 1990s, so we're glad to see some of these things coming back to light.

I was going to ask you particularly around your concern about people in the community having an opportunity to have representation at OMB hearings. Although that's something you've touched on, would you be interested in expanding on that at all? Do you have any



suggestions or ideas on how to ensure that regular people are able to bring arguments to the OMB that have force against lawyers, planners and professionals brought by the development industry? Do you have any ideas around that?

**Ms McGregor:** I think there are two issues. The first issue is the timing of hearings. Having hearings during regular working hours makes it very difficult for most people to attend. Possibly the ability to have some hearings in the evenings would help a great deal. The other possibility is to look at, if not subsidization, at least a lower requirement for legal representation. I checked the OMB FAQ and it does say that a lawyer is not required, but it also says a lawyer is strongly recommended. If you have to have a lawyer, that makes it really difficult. People can spend years paying off the legal fees from an appeal. I don't think anyone makes an appeal lightly, but I also think that people who make appeals should have the ability not to require lawyers for issues that are essentially of policy rather than of legal points.

**Mrs Van Bommel:** Thank you for your participation in this. I certainly appreciate your support of this bill. I had wanted to ask you to expand on some of your experiences with the OMB but I think the answers you have given to Ms Horwath certainly answer those for me.

**The Chair:** Thank you, Ms Van Bommel. Ms Munro from the official party.

**Mrs Munro:** Thank you for joining us here today. I wondered if you could comment. As a community activist, do you have any comments about the role of the minister with regard to determining a provincial interest? You may have noted in the bill that the minister can declare a provincial interest and then become a part of the process and in fact the decisions then could be made through the cabinet. So I just wondered if you had looked at that part of the bill, if you had any comments to make about that.

1510

**Ms McGregor:** In my brief I had indicated that I was not quite sure what some of those provisions could mean or may not mean and whether this was, for example, a cabinet decision or a ministerial decision. That is an area where I think it would be useful to clarify what exactly is meant in this context. If this is in the context of the Planning Act, the environment act, stuff like that, it's quite clear where the minister specifies what clause they're talking about. If it's more general than that, I think it could use some specificity there.

**Mrs Munro:** If I might, I would just respond to that. We don't have anything in the piece of legislation before us that either defines what his provincial interest might be when he declares, or that he has to provide any kinds of reasons for a decision that is made by cabinet.

**Ms McGregor:** That certainly might be useful to add.

**The Chair:** Thank you very much, Ms McGregor. If there are no more questions, I have to make a correction. I just said Mrs Munro from the official party; it's from the official opposition party.

Thank you once again for taking the time.

L'ASSOCIATION DU  
PARTI VERT D'OTTAWA-VANIER  
OTTAWA-VANIER  
GREEN PARTY ASSOCIATION

**The Chair:** The next group is the Green Party of Ontario for Ottawa-Vanier. Le prochain groupe est M. Raphaël Thierrin, président de l'association verte de l'Ontario, comté d'Ottawa-Vanier.

Est-ce que M. Thierrin est à Ottawa en ce moment pour la conférence vidéo? Le voilà. J'aimerais peut-être apporter une correction : est-ce que c'est Therrien or Thierrin?

**M. Raphaël Thierrin:** C'est Thierrin, monsieur Lalonde.

**Le Président:** Merci. Vous avez le choix de faire la présentation en français ou en anglais. Les questions seront dans la langue du choix des députés qui sont ici. Vous pouvez procéder. Vous avez 15 minutes. Si vous ne prenez pas les 15 minutes, il va vous rester du temps pour la période des questions.

**M. Thierrin:** Alors, je me présente. Je suis Raphaël Thierrin. Je suis président de l'Association du Parti vert d'Ottawa-Vanier. Comme vous le savez, le parti vert a eu pas mal de votes dans les années précédentes, donc nous représentons un certain bloc d'électeurs en Ontario. Mais ma présentation sera du côté de l'association du comté d'Ottawa-Vanier.

Je ne sais pas si vous avez reçu les notes que j'avais envoyées par courriel à votre comité.

**The Chair:** Oui, on vient juste de les recevoir.

**M. Thierrin:** Très bien. Alors, si on va au bas de la page 1 : nous apprécions vraiment les efforts du nouveau gouvernement pour faire une révision en profondeur de l'aménagement urbain et autre ici dans notre belle province de l'Ontario, avec les outils, les politiques d'aménagement du territoire et des révisions à la façon dont la Commission des affaires municipales serait formée dans le futur et, en particulier, le projet de loi 26, dont nous parlons aujourd'hui.

En passant à la page 2, qui énumère les principes des Partis verts : évidemment nous aurons le respect et la protection de l'environnement. On met aussi que le centre de décision soit approprié à la décision. C'est-à-dire, si une décision est pour un niveau communautaire, la communauté doit avoir une prise de décision et que ce ne soit pas d'autres acteurs qui font toute la décision. Aussi nous voulons, pour l'aménagement et pour d'autres politiques, qu'il y ait des décisions durables; qu'il ne faut pas revisiter les mêmes choses et trop de fois.

Alors, par rapport au projet de loi 26 et les autres composantes de la restructuration de l'aménagement qui est faite par le gouvernement actuel, le positif, c'est que l'ébauche de la politique que j'ai vue sur le Site Internet des Affaires municipales et du Logement répond à nos attentes dans le sens que ça irait vers une densification de l'espace urbain plus une meilleure protection des espaces verts et des espaces ruraux et fermiers dans les alentours



des villes, ainsi que beaucoup d'autres choses qui sont dans cette politique.

Aussi positif est que le projet de loi 26 projette une période de transition. Comme ça, même si les autres éléments de la politique ne sont pas en place, si le projet de loi 26 est approuvé et est en force, il y a une période de transition qui permet que certains écarts ne soient pas permis dans certaines choses.

Maintenant, le problème qu'on voit est, est-ce qu'il n'y a pas une possibilité de va-et-vient s'il n'y a pas, en même temps que ce projet de loi avance, une réforme démocratique qui se passerait? Si je dis ça, c'est parce que la dernière politique municipale a été passée en 1996, et on sait très bien ce qui s'est passé en 1995 : l'avènement du gouvernement majoritaire conservateur. Maintenant on se retrouve avec un gouvernement libéral, qui met un peu mélo-mélo sur les affaires environnementales et d'autres choses. Donc, c'est très bien. Il va peut-être freiner certaines des exigences du secteur privé. Mais s'il n'y a pas une réforme démocratique en même temps, qu'est-ce qui se passe? Il va y avoir une autre élection dans quatre ans et on va se retrouver avec un autre gouvernement majoritaire. On passe de l'un à l'autre puis quatre ans plus tard on passe à une autre politique et ainsi de suite.

Quand on a un projet comme le projet de loi 26, c'est bien dans le sens qu'il y a la conformité à la politique au lieu que, les décideurs doivent avoir regard sur la politique; il y a de la conformité et on pense que c'est une bonne chose. Mais si on a un va-et-vient continu sur la définition de la politique provinciale, d'après les changements électoraux aléatoires, on s'en va dans un va-et-vient qui n'est pas durable. Alors, ça c'est une chose.

L'autre chose : la conformité à la politique est bien d'une certaine façon, mais est-ce qu'il n'y a pas d'autres façons d'insérer dans les décisions d'aménagement des valeurs environnementales et sociales plus approfondies que celles qu'avait essayées l'ancien gouvernement?

Le deuxième principe : à qui revient les décisions? Ce qui est bien, ce qui contribue au positif dans le projet actuel, c'est que si la politique est approuvée telle qu'elle est sur le Site Internet, c'est bien, parce que les besoins sociaux, économiques et environnementaux, nous pensons, seront protégés à long terme.

Mais les questions : si la façon de procéder ne va pas être un peu du « top down », c'est-à-dire que ça va créer toute une couche de technocrates à Queen's Park, les gens vont dire, « OK, c'est Queen's Park qui décide », et puis ça dévalorise peut-être la prise de conscience des communautés à agir dans la planification urbaine. Parce qu'il faut absolument que les gens se sentent compris, que les gens se sentent écoutés, non seulement aux temps des élections mais aussi pendant que se préparent les projets urbains qui sont proposés soit par la municipalité, soit par le secteur public.

Alors, y a-t-il d'autres façons d'assurer une certaine conformité à la politique provinciale comme, par exemple, avec des études d'ensemble, qu'il y a des

études qui sensibilisent la population à certaines issues et que ça se règle en conformité avec ces études? Aussi, comment est-ce qu'on peut insérer un développement communautaire un peu plus fort dans le projet de loi actuel?

Des solutions durables : ce qu'on veut, c'est qu'il y ait des décisions qui durent, mais aussi que le public se sente impliqué et qu'il comprenne les enjeux provinciaux. Je suppose que, par exemple, quand le projet de loi dit que la province pourrait intervenir avec une période de 30 jours avant la tenue d'une d'audience de la Commission des affaires municipales, on pense que c'est un mécanisme qui permettrait peut-être une sensibilisation du public en et autant que les communautés aient accès au comité des affaires publiques, ce qui n'est pas vraiment le cas en ce moment.

1520

Quand je parle des communautés, ce ne sont pas seulement des échevins municipaux mais aussi des groupes communautaires et autres. Donc, ce qu'on ne voudrait pas qui arrive est que le public déchanse, parce que ça crée un effet « top-down », que la province insiste sur certaines choses et qu'elle impose son pouvoir. C'est une bonne chose si les choses vont d'une manière meilleure pour l'environnement, mais si ça déchanse des gens, à la longue ça ne reste pas durable. Peut-être que pendant cinq, six ans ça marche, et puis après les gens élisent un nouveau gouvernement ou bien les gens décident qu'ils en ont marre des technocrates de Queen's Park etc et cela crée un remous. Donc, il faut connaître des solutions probantes, en tant aussi qu'elles ne sont pas renversées parce que le gouvernement change de cap au temps des élections.

Alors, on reconnaît que l'aménagement à l'échelle de l'Ontario est très complexe mais qu'il y a le besoin de respecter les divers besoins locaux tout en inspirant—au lieu d'imposer des décisions durables, de les inspirer, et donc d'impliquer le sens communautaire, et qui est probablement un meilleur accès par les communautés à la Commission des affaires municipales; mais enfin, qu'il y ait aussi une certaine réforme démocratique, comme la représentation proportionnelle, qui verrait qu'il n'y a pas ces grandes majorités de gouvernement, d'élection en élection, qui créent un effet de bascule pour les politiques que le gouvernement voudrait mettre en place.

I'm ready for your questions, if you have any.

**Le Président:** Merci. Maintenant ça va être au tour du côté du gouvernement. Are there any questions from the government side? You could proceed with your question in English.

Do you understand English, monsieur Thierrin? Est-ce que vous—

**M. Thierrin:** Oui. Yes. Je comprends l'anglais.

**Mrs Van Bommel:** OK. Otherwise, I could also ask it in Dutch if that helps at all.

**Mr Thierrin:** It's not one of the official languages, but I could try.

**Mrs Van Bommel:** No. I understand that. Maybe it should, be but it isn't at this time.



You mentioned that you want more environmental protection within this act. Can you tell me what kinds of protections you're looking for within, I assume, the provincial policy statement?

**Mr Thierrin:** I think one of the things I like in the statement is urban densification. Basically, "urban densification" means creating more infill, or possibilities to put more people within areas that are already zoned residential, to prevent cities encroaching on other areas, into either green spaces or farmland spaces, ensuring that there are appropriate funding mechanisms to develop public transit, but also pedestrian paths and so on—in a city like Ottawa, probably pedestrian bridges across the Rideau Canal would be extremely useful—to ensure that there is more than just the environment, because housing is important. We saw in the last federal election that housing seems to be a major issue here in Ottawa. Basically it's providing incentives for either the private or public sector to develop more housing for families who need it and it's ensuring that the waterways are protected, making sure the riparian habitats stay near the rivers. Those are the types of things we're looking for.

**M<sup>me</sup> Van Bommel:** Merci.

**The Chair:** Merci, madame Van Bommel. I'll move on to the official opposition side.

**Mrs Munro:** Thank you very much for being here with us today via video.

You talked about intensification, and we've heard from other presenters today about that being one of the most fiercely opposed changes in community development, that people are very unwilling to see their neighbourhoods come under any proposals for intensification. I just wondered, because you also mentioned a fear of top-down decision-making, whether that's the reason there's that kind of resistance. Have you in your work identified some of the reasons for this reluctance, and how do you respond to those who resist those notions of further development through intensification?

**Mr Thierrin:** I took a master's in environmental design from the University of Calgary a number of years ago. From what I saw there of architects and planners working together to create models for densification, part of the issue is that we don't have publicly visible models for how it would work. When people hear the word "densification," they think of overcrowding, they think of maybe Tokyo. There are images conjured that are not the reality of what densification could be like. In some cities there is urban infill that takes place, and it seems to create very appropriate houses that are just the right size for what people need. There are ways to do densification that don't result in huge skyscrapers with almost no land around them. There are ways to have maybe something like 10- or 12-storey densification where people are not living on top of one another but that follow the shape of the land. What I'm saying is that an awareness campaign is needed around that whole issue.

For example, at Carleton in Ottawa there is an architecture school. Maybe invite people to present what the community would look like. In Montana they do those

types of things. They do visioning. They say, "What would the community look like if we took away the cars and had more houses? What would happen if we had better access by bypass to the local store?" So, instead of going around in circles in your neighbourhood to go to the local Loeb or Loblaws, you actually could walk for five minutes or take a bike for five minutes to get to the store. It's kind of an education process. That's where I see that. If you want to have some type of top-down process by the province, that's fine, as long as there is inspiration to the communities to go a little bit beyond the boundaries we're setting for ourselves.

I think we're almost in a self-censoring society in the sense that on intensification we can only think, "Oh, the model of overcrowding. That means I'm congested against people. I've paid for my house. I don't want other people imposing on my space." That's a totally normal type of situation. Why not invite the population to see that there are some models available? Co-operative housing certainly has produced a number of good models of different types in different cities across Canada, and there are ways to integrate the landscape and housing in such a way that they provide the quality of life we all want. Quality of life is not necessarily a big house with almost no land around it. It could be a smaller house but a better community, a better sense of belonging to the community where your neighbours live. I think education and awareness-raising are some of the ways of conjuring that. That could be added to the bill by financial incentives or other planning devices.

**Le Président:** Merci, madame Munro. Madame Horwath du troisième parti.

**Ms Horwath:** I was interested in exactly the comments you've just been sharing with us. When you used the words "community development approach," it perked up my interest. I used to do community development work. In fact, in the city of Hamilton, one part of which I represent, we did undertake a number of different public dialogue exercises in dealing with our downtown and our new plan for the downtown. So we did have architects in our community who undertook various charettes, and we had a number of community meetings. But I was interested in the last few words you spoke. How do we make that happen? How do we find ways that official plans are developed with community dialogue and with community participation as opposed to simply a bunch of planners sitting in a room? Could you expand on that a little bit more?

**Mr Thierrin:** I think there is already a lot of consultation taking place. But I think some of the consultation that takes place seems to be presenting a model by experts. If more of the charrette idea you're talking about could take place—when you have an expert presenting a model, even if it's a beautiful model and it's well planned and so on, that's great, but basically people are saying, "This is still an expert presenting that to us." If it could start a lot earlier—for example, it could take place within the school system as well. Teachers are always looking for projects. Why not involve the com-



munity at that level as well? These are the kids who are going to grow up and own houses or have apartments.

There is still the issue of "it's still the planner's idea." I guess the difficulty is that these processes can be very time-consuming, and therefore it's the people who have the time to do it—it's certainly not the people who have three jobs at McDonald's or Wal-Mart who are able to participate in those processes—so how to make the process available to people who have to hold three jobs to make a living and not just the people who are already well-educated and already know how to best present their ideas on things like that. I think maybe part of the educational system could be used for that or, in the summer, there are lots of people playing in parks and so on. Why not have that process in the time of play, instead of having those processes as evening meetings, often during the winter?

**Ms Horwath:** Good ideas. Thank you.

**Mr Thierrin:** Those would be some ideas. Bring the consultation to people, as opposed to having people go to the consultations.

**Le Président:** M. Thierrin, le comité des affaires gouvernementales vous remercie d'avoir pris quelque temps de votre horaire pour adresser vos commentaires ainsi que vos inquiétudes. Merci encore.

**M. Thierrin:** Merci beaucoup, M. Lalonde.

**The Chair:** We have time for a little break, a 10-minute break instead of 15 minutes. Can we do it in 10? Thank you.

*The committee recessed from 1532 to 1542.*

## SUSAN SMITH

**The Chair:** The next presenter is Susan Smith. You have 15 minutes. If there's any time left at the end of your presentation, members of the committee could ask you some questions. You may proceed now.

**M<sup>me</sup> Susan Smith:** Merci, monsieur le Président. Veuillez m'arrêter après neuf minutes afin que je puisse répondre aux questions, s'il vous plaît.

**The Chair:** Voulez-vous le faire en français?

**M<sup>me</sup> Smith:** Non, je vais la présenter en anglais.

My name is Susan Smith. I'm from London, Ontario. I have presented to previous committees regarding the Planning Act. In 1996, I believe it was the standing committee on resource development, but today it's general government.

I believe that what's presented now is part of a process, and it has the potential to be an improvement. My greatest concern is in the area of the provincial policy statements. I read the background document that was provided with the example of the bill. My understanding is that, of course, there are several ministries with several provincial policy statements.

I think the best possible planning has been somewhat bedevilled in the province of Ontario over time because sometimes these policies are internally contradictory with each other. As an example, when I hear a planner I'm fond of, just grinning, say, "I can't explain it. Aggregate

trumps all," I see that as something which misses the biggest part of the picture. I will only underscore and say that I support previous presenters today who have certainly underlined that source water protection is a primary need and concern. I have always looked at the aggregate resource policy as something that is not enabling the full, best possible potential for the province when it trumps everything.

Earlier this morning, Mr Petersen made a presentation where he referred, in agricultural policy, to the protection of classes 1, 2 and 3 of agricultural land as well as specialty crop areas. For the record, I would like to say that because specialty crop areas can sometimes be a subsequent and interim land use—a post-rehabilitation land use or part of a rehabilitation land use—I would like to see classes 1, 2 and 3 agricultural land come ahead of specialty crop areas, even though there may be an economic tension between the two in the longer term. Because what you are doing is planning, I would like to see the classes of agricultural land preserved and greatly protected.

To give a micro-example of planning, I want to mention 921 Logan Avenue in Toronto. I'm not from Toronto, but 921 Logan Avenue is a little, tiny piece of greenfield that I believe should never be paved over. Currently there's an application for 14 parking spaces on it. I have documentation showing that there are about 709 parking areas available in that part, abutting either side of Danforth. That greenfield, I believe, unless there's some nefarious plot afoot, needs to be absolutely preserved as greenfield for access to the subway line, which I believe is the most important part of infrastructure of the whole GTA, as London doesn't have it. We're built on top of underground water flow. We'll never have a subway. It's so significant that I believe it's in the provincial interest, separately, to protect that. To that end, the Toronto Parking Authority should not be able to have a direct entrée to the OMB. So I'll leave that as a side issue.

Again, on the provincial policy statements, I actually support the Association of Municipalities of Ontario's position that it should read "shall conform to." "Have regard to" was not a great thing, and I'm sorry that we've had years of development in the province that has had that as the standard.

Additionally, as the government moves to have once-every-four-year elections, now enshrined in legislation, my suggestion is that the Ontario Municipal Board appointees have their appointments reviewed in a staggered way so that there is carry-over from government to government of people who are working with whatever the current iteration of a government's policy in planning law is and that, as other people have suggested, there be a constant academic training, upgrading, renewal in service and examination and review of the decisions of people who are appointed to that position. I do not oppose retention of the Ontario Municipal Board.

I do support what's in the bill in terms of having it—and this, I believe, is publicly and widely understood—date as at December 15, 2003. I agree with that. I think that's a great way to run a transition, again underscoring



the importance of having the provincial policy statements come first.

From London, I have a concern when the first line in the policy reads, "By the year 2030, there will be four million more people in Ontario." Well, we've had the greenbelt legislation and the Oak Ridges moraine protection legislation. London doesn't have that quite yet. We don't have something like that which protects the agricultural land that still surrounds the city of London, for reasons enumerated by almost every other presenter who's preceded me here today: the people from the school boards, the points made about protecting transit corridors, not permitting down-zoning, people who want more pedestrian-supportive land use, like we have the potential for in a heritage conservation residential district, Old East Village in Ms Matthews's riding, if that goes ahead. I believe all of those things are really important to protecting the built form we have and keeping it livable, and certainly retaining everything that we have that's a nice scale, a workable scale, a supportive scale.

With respect to greenfield, I would like to see the Development Charges Act, in concert with the changes that you make with the Planning Act, updated more than once every five years. We have a serious challenge right now in the city of London, and I'll be leaving you documentation about a report that's probably before the city council tonight, in terms of consideration. We don't want an exposure of more than the municipality can financially manage on the development charges and how that unfolds—and you can appreciate, with pipelines coming from the Great Lakes. I see tremendous pressures for London to grow dramatically, and it would personally disappoint me if the current aggregate policy trumped all, if we only built roads. I feel that would not be using all the tools that are available, as the provincial planners this morning referred to, to do 21st- and 22nd-century planning so we have livable cities the way they have in other parts of the planet.

So again, development charges should be reviewed. If you can make this a part of what you discussed, either in the super-cabinet of nine ministers who are going to integrate these policies—I would love to see them codified. I would love to see source protection for water at the very top of the list.

To address another issue, unorganized territories in the north—your finance committee of the Legislature's meeting up there this week. Last week or the week before, when Bill 100 was discussed, when you debated it clause-by-clause, there were a couple of issues raised about representation of people in sparse populations not having proper representation because technically they live in what are called unorganized territories. Under the rubric of the Planning Act, I believe that you have an opportunity to create a tool that leaves no lands left in a limbo of technical disorganization.

Am I pretty close to my nine minutes?

1550

**The Chair:** You have approximately six minutes left, and I'm going to go to the official opposition party. Mr Yakabuski, do you have any questions?

**Mr Yakabuski:** Well, I have to be honest: I wasn't here for all of the presentation, but I take it for the most part you're supporting the legislation, the proposed amendments to the Planning Act?

**Ms Smith:** With the one very significant qualifier that I would like to see the provincial policy statements improved in the direction that I've suggested. As I had to refer to the legislation that was introduced in December 1995 by the Conservative government, I felt that was such a dramatic step backwards for so many reasons, followed by Bill 110 and the freeze on development charges and a great number of things that happened. This, I feel, is not a step backwards, but I feel that the most significant piece in the whole picture is having provincial policy statements that work and that require actual conforming to them.

**Mr Yakabuski:** You're here, Susan, on your own?

**Ms Smith:** Yes, I'm here as an individual.

**Mr Yakabuski:** What is your comment on some of the positions of many of the home builders' associations that this legislation, even in its proposed form, with the passing of the greenbelt legislation, has already significantly increased the cost of lots to the tune of 30% in the GTA? Is that what we need to be doing? If that's one of the effects of that, we're going to see the cost of homes go up, the ability of people to own a home go down. Is that a reasonable trade-off, in your opinion?

**Ms Smith:** I don't accept their data. They weren't actually able to really produce data. They were asked that by members of the committee already today and they didn't produce data to substantiate that claim. Just sitting back in the peanut gallery here, it seemed not an accurate claim. So it's really difficult for me to respond otherwise.

**Mr Yakabuski:** Do you think they might accept the claims of all of the other submitters are accurate as well? I mean, there are differences of opinion, obviously.

**Ms Smith:** Yes. And sir, you asked for my opinion; that's all I did.

**Mr Yakabuski:** So we'll just take it on balance that their figures are accurate for the time being. If that is the effect, is that a reasonable trade-off?

**Ms Smith:** If that were to be the effect, then the task that's before this committee is even more important because, if the cost of housing is to increase by the exponential amounts they are making claims about, then the requirement to be providing an opportunity to claim waste management plans on a development charge—for goodness' sake, in London we don't even have an industrial development charge for land use. The importance to the average citizen of reducing costs on everything else to make transit more efficient, to make it more affordable, to make every aspect about living—and my bias is cities; I live in a city—makes the task before this committee even more important, who you pick for the OMB even more important, in terms of the quality of the decisions that will be rendered.

**Mr Yakabuski:** Do you believe that the OMB is tilted in favour of developers?



**Ms Smith:** I honestly don't have an opinion about that. I don't know enough about it.

**Mr Yakabuski:** Thank you very much. I appreciate you coming.

**Ms Horwath:** I was interested in your comments about the updating of development charges more often than every five years. First of all, do you have a recommendation on what the time frame should be that would be more appropriate and also whether there are specific things that are missing from the ability to levy development charges against them currently that need to be included?

**Ms Smith:** I haven't looked at it for a really long time, actually, but there are certainly capital costs that need to be included, and waste management was one. Just to give an example, when I look at greenfield development, I think of corridors, utility corridors, and more than 5% open space, for heaven's sake. The 5% open space is a real inarticulation in the Planning Act; for instance, reference to transportation corridors, waste management corridors, what might be potentially other utilities in the future that people may need access to; why greenfield wouldn't have land set aside, because it's greenfield, without mature deciduous cover, creating space for composters, for a level of waste management that doesn't involve picking up somebody's kitchen waste with a fossil fuel-powered vehicle that has to run on aggregate-using city streets. There have to be other ways to do this.

To include that in the development charge as well—the document that backs this up is for a 26-year time frame. I'm not convinced that revisiting the development charge only five times within that time frame is adequate, given that the suggested population growth is four million people. I'm actually prepared to suggest a three-year review of the development charge, because the way growth has been taking place, it's at least a valuable exercise to help municipalities that have officers elected once every three years to really get themselves up to speed on what the real operating costs to the community are and the impact of all decisions. It comes right back to the balance sheet every time.

**The Chair:** Our time is up, but you have shown that you have a keen interest in the future of our environment. Thank you very much.

## DUFFERIN AGGREGATES

### ST LAWRENCE CEMENT

**The Chair:** The next presenter will be Dufferin Aggregates and St Lawrence Cement: Bill Galloway, general manager. On behalf of the standing committee on general government, I would like to welcome you to our public hearing on Bill 26, An Act to amend the Planning Act. You have 15 minutes. You can take the whole 15 minutes or leave some time for questions at the end.

**Mr Bill Galloway:** Thank you, Mr Chairman, and members of the committee. You are correct: I am here today representing Dufferin Aggregates and St Lawrence

Cement, but just so you are all aware, I carry two other hats. One is chairman of the Ontario Aggregate Resources Corp and the other is that I am a member and past chairman of the Ontario aggregates association. But I am here speaking on behalf of the company.

Dufferin Aggregates produces roughly 75% of the stone that goes into the GTA, and we operate quite a broad spectrum of pits and quarries, from Mosport in the east, north to Carden, down into the Hamilton area and west as far as Kitchener-Waterloo. We employ over 400 people, and there are 1,300 people employed by St Lawrence Cement. Our Milton quarry and the Acton quarry just north of Milton are our two largest assets. Milton is certainly the largest quarry. It has been there since 1964 in the town of Milton and actually straddles the border between Milton and the town of Halton Hills.

It's clear from our submission that aggregates are an essential part of our growth. We know we depend on them not only for our own well-being but also our economic growth. When you look at what we've been blessed with in the world, most of what we are as humans—not only do we depend on our environment but we also depend on our earth to grow our sustenance and also to mine a lot of the products we use in our everyday life. So aggregate is a key component.

With regard to the map—I'll skip the detail of the map—it does give you an indication of our overall business within Ontario.

We've been fortunate to be able to speak to various standing committees, most recently the greenbelt. We have made a statement on page 1 that deals with our rehabilitation plans. We are recognized as a provincial leader and in some cases a North American leader in rehab. We see certainly that we are an interim use and, as such, today in parts of our quarry we have 155 bird species; 40 of them are actually breeding in place. We have over 20 different dragonflies and various butterflies in our quarry and as many as seven different frogs. So we believe we're an interim use because we practise progressive rehabilitation.

1600

With regard to aggregates and the provincial use, we don't see ourselves, as an industry or as a company, trumping the needs of the other planning elements and the other provincial policy statements. We do believe that a close-to-market supply is very important; it's important to our economy, it's important to our growth.

As early as 1978, the government recognized that there was a need for a sound policy statement. Right now, as you know, the PPS talks about, "As much of the mineral aggregate resource as is realistically possible will be made available to supply mineral resource needs, as close to markets as possible."

What we're talking about there is, let's ensure that we do the whole job and recognize, as we will see later on, that one of the reasons you want to be close to the supply is, yes, a cost issue, but it's also an environmental issue with regard to greenhouse gases and fossil fuel consumption.



The state of where we are today is that locally produced resources are sold at the rate of 3 to 1 over what has actually come on to the market as new licences. For crushed stone, which is produced at Milton and Acton, there hasn't been a new licence granted since 1978, and those are the high specification materials that MTO needs and they're also the key materials needed for the major marquee projects that you see in cities like downtown Toronto with the SkyDomes and the high-rise condos and that type of material.

That's certainly an issue, because we've had Minister Caplan talk about an infrastructure deficit. Well, there is a deficit in aggregate today, and those numbers can be supported by Clayton Research and by MHBC Planning, and those documents are in the hands of the ministry now.

Our current situation is really not sustainable. Pushing the aggregate industry further afield from the GTA isn't sustainable either, because every time you move a kilometre away from our key market, the 2.25 million-plus tonnes of greenhouse gases and the 820 million litres over the next 10 years—those are actual facts and not fabrications—it is the equivalent of adding 50,000 cars to the road every year.

Today we've got a shortage of transportation in trucks, and one of the key components is the number of trucks that actually take the haul from the various points in the province to the GTA. Most of the transportation costs will be the equivalent of \$4 billion over the next 10 years, and the public sector actually uses about 50% of the aggregate, whether it be municipally or provincially, for MTO work. So our concern is that we look at it from the totality of the environmental picture and that if you're further out you have more trucks going past more people and creating other environmental concerns.

In a coordination of the Planning Act amendments, on page 8 the message here is that we support the proper implementation of provincial aggregate policy and the provincial policy statement as it is. We also support the greenbelt initiative that has been well outlined and we feel it would be a benefit not only to the industry but to the province as a whole.

What we are hoping for is that we provide clear direction so that both the provincial policy statement, the greenbelt plan and the growth management plan in terms of their goals and objectives are very clear so that, as they go forward, it provides clarity downstream to the municipalities that will end up implementing these Planning Act amendments. It's really the intent and making sure that the intent of the government ends up being implemented effectively by the municipalities. If it isn't implemented properly, then your intent may not actually reach reality.

As I said, we do believe in the "shall be consistent with" section 2 statement, and we endorse the province policy statement. By no means does the current provincial policy statement or any draft of any legislation I have seen provide aggregates with a trump over environment. We wouldn't want that. What we want is just to

make sure that, on balance, each of the provincial policy statements are read in their entirety and are consistent with the direction that the government wants to go. You will not find an aggregate professional in this province who says that we want to trump any of the other provincial policy statements.

What we are concerned about is the clarity of the rules so that the team that's implementing this knows exactly what the intent is and they do implement it. I've been challenged by one of the municipalities in Halton that we work in. We have a very strong relationship and they asked me why I challenged their official plan. I said to them, "It's a process. What I want is clarity in the rules, and right now, I believe you're interpreting the rules differently than the intent of the legislation that's being brought forward. So I'm challenging it just so that we have the time to make sure that we understand how we're implementing this. We're going to end up implementing this together." That clarity is something that we want to make sure happens through the implementation process.

We're not in favour, either, of changing the OMB. We have been involved in various OMB issues as an industry. We don't feel that they're biased in direction. We feel it's a body that has been provided with clear expertise that works on behalf of the province to make sure the general policy guidelines are implemented appropriately. We don't buy into the increased cost and delay arguments or uncertainty or the politicization of it or any of those issues that have been brought forward.

We do believe that, as you move forward with a new piece of legislation, you move forward from day one and not retroactively, so the transition rules need to be clear.

I've talked about clarity in implementation, and that's where the monitoring comes in. There has to be some feedback mechanism to the province so it has a good understanding that the intent of the legislation is actually being implemented in the field. We want to make sure that we monitor and we want to be able to track success.

The end game for the aggregate industry and St Lawrence and Dufferin is that we want to make sure that, as a company and as a province, we positively plan for aggregates. We know and have participated in the NEC, the ORM, the greenbelt. We know what restrictions apply there. Now, with the Municipal Act, we want to make sure that the consistency of the statements that have been made in those other pieces of legislation are carried through effectively into the Planning Act.

We certainly have economic restrictions as time has gone on. It's always tough to buy what you want to buy and locate where you want to locate. We tend to locate where God put the aggregate, and we have to make sure that our planning statements are consistent with that and protecting resources, but not always at the expense of other issues within the provincial policy statement.

It's planning now. My last message would be number six, which is, let's continue to plan positively for aggregates. The OMB does provide a critical role in providing appeal and arbitration for both sides of any argument, and eventually those specialists should come up



with the right answer in the interest of the people of Ontario.

Specific reform recommendations have got to be evaluated for their effectiveness in contributing to the protection of provincial interests, and part of that is making sure that aggregate is available and close to market supply. I believe through the legislation—both the greenbelt and the growth management plan—aggregate has been recognized as an important resource but, again, I would stress that we do not believe it trumps all other issues.

1610

There are three maps enclosed. The first just shows you various rehabilitation sites across the province that support the interim use argument. The second deals with the various—these are real pictures from my real quarry. These species do exist, along with 300 other plant life species. The last map is a man-made wetland that has these species in it and also has the 300 or so plant life.

I think I left it us short for not too many questions. My apologies.

**The Chair:** We have time for one question, and I'm going to ask the third party.

**Ms Horwath:** My question is just around the idea of the cabinet being able to intervene and overrule an OMB decision if they deem it to be in the provincial interest. Could you comment on that?

**Mr Galloway:** We don't support that because it basically means that for us as a company—and I suspect my colleagues in the industry would agree—the policy is in flux. I think the OMB has the experts there to be able to implement policy. As you know, there are examples where both the public and the proponent have the ability to appeal an NEC joint board ruling to cabinet. That, as you know, does not have a timeline. There is a process but there's no—it could be hung up forever.

We really support the OMB. I've been fortunate not to be at too many of those.

**The Chair:** Thank you very much. Our time is up.

**Mr Galloway:** Thank you very much.

**The Chair:** We appreciate the time you have taken to come down and voice your concerns and your comments. Thanks again.

## CONSERVATION COUNCIL OF ONTARIO SMART GROWTH NETWORK

**The Chair:** The next presenter would be Chris Winter. He is the co-chair of the Smart Growth Network. Thank you for coming down and, on behalf of the committee, welcome to the public hearings. You have 15 minutes. You can take the whole 15 minutes or leave some time for a question period at the end.

**Mr Chris Winter:** I always hope to leave some time and then it always works out the other way, but I will endeavour to be brief and to the point.

I'm actually here representing the Conservation Council of Ontario, for whom I work as the executive

director, and also to a degree the Smart Growth Network, for whom I am the co-chair. Both of these organizations give me an opportunity to get a very broad spectrum of views and input, much like a public consultation in my own right, on these issues, and planning reform in particular in this case. What I have been able to do is focus on some of the key points, and on one of the key points that I think is going to be problematic in the whole planning reform process, and put forward some suggestions and recommendations.

Bill 26, and planning reform as a whole, has a goal of strengthening communities and creating compact, liveable communities. That's very consistent with the goals of the Smart Growth Network: to curb urban sprawl and then to create healthy, liveable cities. The third goal we have is to support effective citizen involvement in the planning process. So we're very much encouraged by the general direction Bill 26 and the whole planning reform package is taking.

I also want to commend at this point some of the work that's been done by other organizations within the Smart Growth Network: Ontario Nature and, particularly, the work done by Mark Winfield and the Pembina Institute. They have done a very rigorous analysis, and that has allowed me to focus on one or two points and say, "Hey, here's where we need to do some work."

The concern I have is what the impact is going to be at the community level. We have a lot of tools in place here to curb urban sprawl, to reshape urban development, to focus it in on existing communities and create compact, intensified community development. What we don't have, what I haven't seen in this package, are the tools to make that community intensification work for the people in the community. There are provincial tools, there are municipal tools, but there is nothing, really, in the package that is focused on community design and enhancement. In fact, in the provincial planning statement you get a little bit of overlap and flip-flopping between the terms "community" and "municipality;" they're used interchangeably. I think we need to tighten up the understanding that there is a level of planning beneath municipalities, which is the neighbourhood design, the healthy, livable community within municipalities, and we don't have the tools to promote that.

There are two arguments I've heard, two complaints about intensification: One comes from the developers saying, "We want guarantees that our intensification projects are going to go through unfettered," and the other comes from the residents saying, "We don't want intensification forced on us. We want to have a say in what our community is going to look like." Unless we resolve this conflict, I think we're going to have a lot more battles at city council and a lot more battles at the OMB.

Looking at the past, there are a number of tools for community design and, in particular, looking at the Planning Act, there is the whole part IV on community improvement planning. There's nothing in Bill 26 addressing this or aimed at improving that section and



integrating it in with the current push for urban intensification, so we need to address that.

There are tools for community planning. What we need to do is update those tools to make them consistent with some of the new principles that have come forward, even in last five years, through the Smart Growth movement, which is a North American movement to create compact, livable cities.

It's very difficult to suggest a simple clause for Bill 26 that we can insert. What we really need to do is look at what are the key messages that we send and how do we support those messages with detailed policies, guidelines, support programs and case studies, the tools that are really going to help turn around the whole face of urban development in Ontario and to make this compact, intensive development truly livable and a win-win scenario for those living in the communities where the intensification is happening.

My recommendations here are: Within Bill 26, I recommended that you include a definition of "community improvement" that allows the scoping of community improvement plans to include areas of compact development and intensification. In there, I mean both the greenfield development, so that we can do an intensive planning process for new greenfield development, as well as for the redevelopment of existing areas where we expect growth to occur.

The second recommendation is in the provincial policy statement. We recommend that a new section, 1.7, should be included in the provincial policy statement to provide direction on the requirements of community planning. I have a draft definition and section that I've included for you.

The third is a stakeholder process. With these kinds of triggers in place, what we need is a stakeholder process, much like the Greenbelt Task Force, where you're bringing the key stakeholders from the development community, the municipalities, the neighbourhood associations, environment and housing groups together to really hash out what this new design process would look like and how we make it work.

The fourth element is to look at model plans. We do have this window of opportunity in the next couple of years, as the whole changes in the Planning Act and process kind of filter down, to do a couple of very good models. I recommend here the Seaton lands in Pickering which, as you know, have already been quite well studied, but it should be an example of smart growth when we develop that new area. Also, I've been following with interest a series of articles in the local paper on area C in Cobourg as a new greenfield area and what that could look like if it was designed for the community as opposed to just a traditional urban-suburban residential development. So those are the four main areas.

1620

I have included a recommendation that could be put into the definition of "community improvement project area," which would mean an area either developed or to be developed, the community improvement of which in

the opinion of the council is desirable because of—and this is the new wording—"the potential for improving community services and values through community design and compact urban form," and then back to the original definition of age, dilapidation etc. This would expand the scope of community improvement plans to allow it to do some of this new visioning, as well as just the old model of the plans where they were dealing with rundown areas, particularly in downtown urban cores. So you have to provide these new tools to municipalities and communities to be able to engage in this process of rethinking urban development in Ontario.

The section on the policy statement includes in there some of the requirements or the visioning of what a healthy, mixed-use, compact, pedestrian-friendly community is. It just lays out essentially the points that need to be included in this community plan without specifying exactly what they are, but it means that it has to address ease of access to local health services; ease of access to local retail services; ease of access to local education services; ease of access to recreation and cultural activities; local transportation options in the community; pedestrian-oriented community centres; a mix of housing, green space, retail and employment opportunities; and an appropriate mix of housing types. So it lays out what the elements of a healthy community are. It allows you, then, to plan for those elements in a community, which is a sub of a municipality, and then use this plan to drive the development process. When developers are coming in and saying, "We want to intensify, we want to develop this lot," the municipality or the community is then able to take this plan and say, "How are you going to contribute, either through development charges or actual physical contribution, to us achieving this plan?"

Bringing it back to Bill 26 and section 4 of the Planning Act, putting it into that section in the community improvement plans allows the ministry to identify and earmark funds for community enhancement through these plans. It then allows us to operationalize some of these plans a lot easier than if it were just a stand-alone municipal plan.

I'll leave it at that. Clearly, there is a strong need in this planning reform to address community design and enhancement. If we don't do it, then I think we're in deep trouble, with lots of hearings, lots of local complaints, petitions, OMB hearings, everyone being up in arms and fighting about the intensification that is bound to happen in their neighbourhoods. We need to do something very soon to turn what could be a potentially contentious scenario into a win-win scenario. Thank you.

**The Chair:** We have four minutes left. We could have two minutes for two parties. It's up to the government side.

**Mrs Van Bommel:** Thank you for your presentation. I'm certainly intrigued by the concept of community design and improvement. Are there any jurisdictions that are currently doing this type of thing, be it in other provinces or other countries, that we could use as a model, take best practices from, so we avoid reinventing the wheel?



**Mr Winter:** I've been doing a bit of Web search, as we all do when these questions come up. I found a couple of Web sites, in the UK primarily, where resources are there. Community planning means a whole lot of different things to different people. It's everything from planning for social services to actually planning the physical layout of the community. There's a tremendous amount of resources available worldwide. I'd probably say the best examples of this are in the UK, but I think we would also be able to find examples throughout North America of case studies where this is being done. In Ontario, we don't really have too many case studies, which is a shame. Cornell is typically referred to as one of the best examples, and it is better; it is not the best. I think we would be able to find some good case studies and build on those.

**The Chair:** Now I'm going to go to the official opposition side.

**Mrs Munro:** Thank you very much for coming here today. I realize you've used your time in talking about a very specific part of what you consider to be appropriate to add to this bill. Actually, the previous question was also my question in terms of places where there are those good examples. One question that relates to that, and then I'll get to a second one, is, in the work you've done, have you seen where social services have also been included in looking at this kind of community design?

**Mr Winter:** Absolutely. Most of what I've seen is theoretical and not on the ground. In part, that's due to my limited budget and travel expenses, so I can't get to many of these places, and across the States where they've attempted this. One of the things about doing this compact and mixed-use design built around the nodes or village centres within an urban area is that you're able to look at social services and health care services and plan the kind of primary service, the first contact service, so that it's within your community, within walking distance, in an affordable, accessible manner.

To use health care as an example, we're not designing hospitals, we're designing clinics. We're designing the local units where people can go to a family doctor and making sure that there is that ease of access within the community. That should reduce wait times. It should reduce costs. It's the same with social services. It's to ensure that the key social services, be it daycare or food support for the elderly, are all available within that local community, and identifying where the gaps are in our planning and saying, "This is where we need to put the emphasis."

**Mrs Munro:** My final question then: With regard to the provincial policy statements, obviously it would seem to me that to take on this as part of the inclusion in Bill 26, you would also be looking at significant changes to provincial policy statements. Is that a fair comment?

**Mr Winter:** Yes, and that's part of the submission we made on the provincial policy statement, which is to include a section in there on community design and enhancement of community planning that would outline the key criteria for a healthy community. So take that one

step further. The legislation is the trigger, the policy statement fleshes it out, and then the next step is to bring all the stakeholders together and actually work through the design, the guidelines, to assist communities in undertaking this planning process.

It is new, what we're doing. It has not been done in Ontario. We are able to find precedents and examples within the smart growth movement across North America, but it's also borrowing a lot from some of the traditional planning ideas of Europe, creating those compact villages or towns that will last for centuries and be vibrant community centres for centuries.

**The Chair:** Thank you very much, Mr Winter. We appreciate your presentation.

1630

#### ONTARIO CATHOLIC SCHOOL TRUSTEES' ASSOCIATION

**The Chair:** The next group is the Ontario Catholic School Trustees' Association, Mr Ken Adamson, director, and Peter Lauwers, solicitor. You have 15 minutes. You can take the whole 15 minutes or leave some time at the end for questions. You can proceed.

**Mr Ken Adamson:** Good afternoon. I'm Ken Adamson, member of the association's board of directors. I'm a trustee for the Dufferin-Peel Catholic District School Board. With me is Peter Lauwers, our association's solicitor.

The Ontario Catholic School Trustees' Association appreciates the opportunity to address the standing committee regarding Bill 26, the strong communities act.

You have before you our written submission. You will note that this brief has been jointly written by the four trustees' associations that represent all the publicly funded schools in Ontario. Our unanimity speaks to the importance of these issues to all Ontario school boards and to our strong resolve to help bring about changes we seek.

Our colleagues from the French public and French Catholic trustees' associations were not able to be with us today.

We would like to mention the presence of Tom Pechkovsky and Joel Sloggett of the Ontario Association of School Business Officials and acknowledge the support of that association in our submission.

Bill 26 is an important part of the planning reform within the context of the government's current larger initiative in this area. The proposed changes to Bill 26 that we recommend are meant to be effective in themselves and also to enable and guide appropriate changes to the provincial policy statement. To provide the full context, our submission includes comments on proposed reforms to the provincial policy statement and to the Ontario Municipal Board.

In our submission today, OCSTA will focus on the first five recommendations in our brief. Because school boards are major players in the planning process, the provincial trustees' associations have had a long and



abiding concern about planning law. We applaud the government's goal in building strong communities where all Ontarians can thrive. We therefore focus on the importance of schools in building strong communities.

OCSTA and our partner associations believe that schools are an integral and important part of any strong community. They are the places where young people gather to learn and to absorb the values of the broader community. Schools are places of community activity. They provide valuable green space, particularly in urban areas. As well as providing recreational facilities for community use, schools are significant users of land and are essential to planned communities.

The importance of schools to communities has been recognized by the Ontario government and particularly by the Premier and the Minister of Education. The siting of schools is critical to the long-term success of schools and their local communities. The goal of school boards is to build right-sized school buildings on right-sized sites in the right location in relation to student population.

In recent years, school boards have increased in size and sophistication. Many, particularly larger boards, have dedicated substantial resources to land use planning. They have departments dedicated to school planning and employ professional planners who work closely with the Planning Act and various public bodies. School boards also have ready access to land use planners and demographers in the private sector. Yet, despite their considerable expertise, school boards are too often the forgotten siblings in the municipal planning and zoning process. The existing provisions of the Planning Act do not sufficiently recognize the importance of schools in planning. Municipalities have often disregarded the needs of school boards, and the Ontario Municipal Board has on some occasions failed to defend the interests of education.

We would like to state clearly and emphatically that this is the time for the province of Ontario and municipalities to recognize and respect the valuable expertise that school boards bring to the table in planning strong communities. In general terms, it is our belief that neither the Planning Act nor the provincial policy statement in its current or proposed draft give due respect to the role of schools in building strong communities and to the role of school boards in planning and operating schools. The recommendations we make are aimed at a reasonable rebalancing of responsibilities among the public bodies involved in the land use planning process.

In the section of our brief on page 7, we comment both on the current Planning Act and on the proposed amendments to be made by Bill 26. The associations are generally in support of Bill 26 proposals. We support particularly the increase in the time period available for making decisions before appeals may be made to the Ontario Municipal Board in respect of official plan amendments, zoning bylaws and subdivision approvals. The additional time will provide for more orderly municipal decision-making and consideration of the concerns raised by commenting agencies such as school boards.

The tendency of municipalities not to release planning reports until the day before the public meeting required under the Planning Act creates difficulties for school boards. This tendency may be a symptom of timelines under the Planning Act that are now too short. This puts real pressure on commenting agencies like school boards, which must attend the public meeting and express their views in order to retain appeal rights.

Just as it is not appropriate for municipalities to be squeezed by unreasonable time constraints, it is also not appropriate for commenting agencies such as school boards to be squeezed by untimely reports from municipalities. The associations recommend that an obligation be inserted into the Planning Act requiring municipalities to make the report of planning staff regarding planning-related decisions available on the date that notice of the public meeting is provided. This will generally provide commenting agencies such as school boards with 21 days' notice of the position to be taken by the municipal planning staff. If it is felt that this additional obligation reduces the time for municipal review too much, then the associations would support the addition of 20 days to the time limits proposed by Bill 26 to accommodate this new obligation on municipal planning staff.

The associations also support the proposed change in language that would require the planning decisions to be consistent with the provincial policy statement. There is, however, a small word of caution. As a statement of policy, the provincial policy statement is not as definite and clear as a piece of legislation. Some interpretations are therefore required and there will be honest differences of opinion. The associations are confident that these conflicts of opinion can be resolved by the Ontario Municipal Board on appeals where there is local disagreement.

The associations propose a number of amendments to the Planning Act to address our concern that the role of school boards is not well defined or respected by the act. These amendments are important not only for the Planning Act itself but also for the provincial policy statement which depends on definitions in the act. School boards are lumped into the definition of "local board" that combines them with a number of other entities with more limited responsibilities and therefore tends to downplay the school boards' role. The associations propose that the term "school board" be added specifically to the definition of "public body." This change should be made in sections of the Planning Act that refer to "local board," particularly in subsections 3(5) and (6) and proposed in the amendment by Bill 26. The specific reference to school boards will be of assistance in ensuring that they are recognized as public bodies with weight and significance in addressing matters of provincial interest under section 2 and in making planning control decisions under section 3 of the Planning Act.

Section 41 of the Planning Act deals with site plan control. The experience of school boards has been that many municipalities routinely ask for more than they are entitled to under section 41 in exchange for site plan



approval. Since school boards often find themselves in tight timelines, they are sometimes forced to submit to municipal demands that are in fact illegal, time consuming and costly. While an appeal to the Ontario Municipal Board is theoretically possible under section 41, the delay that such an appeal would bring about often makes this remedy useless. The associations recommend that a right to appeal and build be added to the Planning Act, with the requirement that the municipality reimburse the school boards for requirements imposed which the OMB determines ought not to have been imposed under section 41.

1640

The intention here is to give the school board the ability to protest municipal requirements without holding up the process of the site plan agreement. The existence of this provision would discourage municipalities from asking for more than they're entitled to under the Planning Act. The result of this is only fair.

Boards now plan and build schools for long-term sustainable enrolment. This means, however, that a school will not be able to accommodate all of the students during peak enrolment periods, often in the early years of an area. The Ministry of Education recommends that portables be used to accommodate students during a peak period. As the enrolment settles down to a long-term sustainable level, portables can then be withdrawn. Over the life cycle of a school it can be expected, though, that there will be times when portables will be needed and times when they will not.

Traditionally, local residents dislike portables. Parents understandably want to have their children attend school in permanent facilities that they see as superior to portables. Others in the community often see them as an eyesore. Local politicians on municipal councils are often resistant to the placement of portables on local school sites because of community pressure.

In recent times, municipalities have made it more and more difficult for school boards to place portables. They have insisted on site plan agreements and site plan approval to locate portables. The delay in obtaining site plan approval and building permits can cause real hardship in the local school community and neighbouring schools and can impose additional transportation and other costs on school boards. It can encourage boards to leave empty portables on site to avoid predicted future problems in placing them there again.

The Ontario Catholic School Trustees' Association and our partner associations recognize the concern that municipalities have in the placement of portables as an appropriate issue to be considered in the process of site plan approval. In that exercise, we recommend that an area of the school property be identified as eligible for portable placement without further municipal approval.

OCSTA would like to conclude our presentation at this point. We thank you for the opportunity to address you in this regard. We invite your questions.

**The Chair:** Thank you, Mr Adamson. We only have time for one question. It's the official opposition party's turn to ask that question.

**Mrs Munro:** Thank you very much for your presentation here. I have to express sympathy for the kinds of issues that you've raised in this presentation.

I can remember quite clearly a situation that I'm sure would fit into the kind of examples you've provided us with, where the municipality held up the approvals for the washrooms for the portables. The portables had come; the school couldn't use them because there were too many of them. They required washroom facilities, and the approval for the washrooms hadn't come. All of the students, then, had to be accommodated for a period of time within the building and weren't able to use the portables that were sitting there on the school property.

So rather than a question, I would certainly want to place on the record an understanding of some of the issues you've brought forward here today. I would certainly hope that the government will take time to consider the kinds of issues you've raised, because it would seem to me that they are things which are really important for you to be able to do in a timely way and without the kind of bureaucratic restrictions you've encountered.

**The Chair:** Our time is up. We really appreciate the report you have submitted to us. You can rest assured that the staff will be looking through it.

## ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

**The Chair:** The next group is the Ontario Public School Boards' Association. On behalf of the committee, welcome to the public hearings on Bill 26, An Act to amend the Planning Act. You have 15 minutes, of which you can take the whole 15 minutes or, if you wish to leave some time for question period. Every time you address the members, if you could state your name, please. You can proceed.

**Mr Rick Johnson:** Good afternoon. I'm Rick Johnson, trustee from the Trillium Lakelands District School Board and president of the Ontario Public School Boards' Association. With me is York Region District School Board superintendent Dr Ralph Benson, our association's technical adviser regarding Bill 26.

I am very pleased to be presenting today with and in support of my colleagues from the Catholic trustees' association. The role of school boards in the municipal planning process is of great importance to all in education and to the citizens of Ontario.

OPSBA has prepared our written submission in collaboration with the three other provincial trustee associations. I would refer you to the brief handed out by the Ontario Catholic School Trustees' Association. In our presentation today, OPSBA will focus on the recommendations, beginning with recommendation number six, subdivision control.

Fundamentally, in relation to developments, school boards see themselves as providers of a form of infrastructure. There is no significant difference in terms of the timing of development between the provision of



water services, roads and the provision of educational services.

School boards have a statutory obligation to provide education to students. If housing is built before schools are available, the burden of transportation must be borne by the school boards. The cost of temporary accommodation and transportation is, over a relatively short period of time, equivalent to the cost of new school buildings.

Even though the current funding model provides pupil accommodation grants for new school construction and the Education Act allows eligible school boards to levy education development charges to pay for school sites, there is often some delay in the acquisition of school sites and the provision of schools. We propose language for the act to address the staging of residential development to help ensure that schools are available for students in new housing developments and that an undue burden is not cast on school boards.

**Reservation of school sites:** In the past, school boards and developers entered into option agreements under which the obligation to buy a school site designated in a plan of subdivision lasted for a few years. More recently, with the strong market activity in housing, developers have been anxious to complete a plan of subdivision and move on and are not as receptive to the concept of option agreements as they have been in the past.

The experience of school boards is that it takes a reasonable time to determine whether a school site is needed in a particular area. During that time, development and subsequent student yield from new development can be monitored. Generally speaking, it can take up to five years from the date of registration of that phase of the subdivision containing the school site to determine the need for an elementary school site and up to 10 years to determine the need for a secondary school site. It would be better for the orderly planning of the community if option periods were standardized. The associations propose an additional school site reservation period of five years, with a subsequent reservation period of five years, renewable at the instance of the school board.

**Parkland dedication:** Parkland dedication is addressed in section 42 and again in section 51.1 of the Planning Act. Traditionally, these sections have been interpreted by approval authorities in such a way that school boards were not obliged to provide either land or cash in lieu of land for parkland purposes. However, recently there have been some indications that municipalities might be changing their practices. The associations recommend that school boards be exempt from the requirement to contribute land for park purposes or to contribute cash in lieu for park purposes.

**Proposed provincial policy statement:** The comments on the proposed provincial policy statement set out in the third section of our brief are, strictly speaking, not directly relevant to the standing committee's consideration of Bill 26. Because Bill 26 is intended to operate in a context that includes the provincial policy statement, however, we thought it would be helpful for the standing

committee to understand how the changes we propose in the Planning Act to be incorporated in Bill 26 would be reflected in the provincial policy statement.

Like the current Planning Act, the proposed revisions to the provincial policy statement fail to acknowledge the role of school boards. Although public service facilities are given a higher profile, school boards are not mentioned as decision-makers with influence on the planning process. There is, for example, no specific direction to coordinate official plans and the long-term accommodation plans of school boards as required under the Education Act. Since both of these plans operate within a similar long-term time frame, it makes sense they should be linked.

The experience of the associations has also been that municipalities will not always utilize opportunities to coordinate public land uses such as the location of schools beside parks that allows for a minimum use of land and a maximum use of public facilities. We propose some language on this issue.

While it is clear that municipalities have important responsibilities under the Planning Act, it is equally clear that school boards and other public bodies have different and important roles to play in making decisions that impact on land use in a municipality. This must be recognized. In our brief we propose changes to the draft provincial policy statement that build on the changes we are proposing to the Planning Act.

#### 1650

**Ontario Municipal Board reform:** The fourth section of the brief, dealing with the Ontario Municipal Board, is not, strictly speaking, relevant to this committee's consideration of Bill 26. At the same time, however, the actions of the Ontario Municipal Board form part of the context within which Bill 26 is intended to operate. OPSBA and our partner associations are generally in support of the roles and responsibilities of the Ontario Municipal Board. Notwithstanding our concerns about some OMB decisions, we would not want to see the elimination of a right to appeal planning decisions from municipal councils to the Ontario Municipal Board. A form of appellate body is necessary to ensure that parties coming before municipalities with development proposals have a venue to seek redress if proper planning principles have not been observed by the municipality or if they have been unfairly treated.

It must be recognized that a vast number of planning decisions are made every day by municipalities across Ontario, only some of which are appealed to the Ontario Municipal Board. Appeals, in short, are the exception and not the rule. It is from this perspective that the frustrations of municipal councils about the OMB must be assessed.

The associations believe that an appropriate appeal body is the Ontario Municipal Board. The OMB has developed over many years a measure of expertise that could not be matched by a court. OMB proceedings are quicker and relatively less formal than court proceedings. They are also more open to members of the community



and are certainly more accessible. The associations believe that the Ontario Municipal Board should continue to have the same remedial jurisdiction that it has at the present time.

In conclusion, OPSBA is grateful for the opportunity to provide our submission to the standing committee on Bill 26. We applaud the government's goal of building strong communities where all Ontarians can thrive. We believe that achieving this goal will require the full engagement of the school boards of Ontario. Schools are an integral and important part of any strong community. It is our associations' belief, based on the experience of our member boards, that there is often an unnecessary degree of friction between the municipalities and school boards on land use planning issues. Recognition by the province of Ontario and by municipalities of the considerable and valuable expertise that school boards bring to the table in planning strong communities would better serve the public interest.

OPSBA and our partner associations believe strongly that it is time to rethink in planning terms the relationship between the provincial government and school boards and between school boards and local municipalities in land use planning for schools. The recommendations we have put forward for changes in the Planning Act and in Bill 26 are aimed at a reasonable rebalancing of responsibilities among public bodies involved in the land use planning process. The associations are proposing modest and balanced amendments that continue to recognize the necessary pre-eminent roles of municipalities. The task of planning reform that the Ontario government has undertaken is an important opportunity to recognize and give more prominence to the importance of schools in building strong communities and the role of school boards in planning for and operating schools.

OPSBA appreciates the opportunity to address you in regard to changes to Bill 26, and I invite your questions.

**The Chair:** We have approximately six minutes left. I'd like to give a chance to the three parties, if we could keep our questions short.

**Ms Horwath:** I'll be very brief. It's interesting: Your brief really does speak to a number of issues that are happening in my municipality, which is Hamilton. The school board wants to build a school in a park and the municipality doesn't want that. We have greenfield development where there are huge housing pressures and schools are not being built and parents are getting really angry.

The other one that interests me is where schools are closing. I'm wondering if you can comment on whether you think there's anything that needs to be done on the other side of the scale where schools are closing. We have joint facilities currently with schools that are closing, and then the municipality is stuck with having to deal with the division of things like boilers. It's quite a bizarre situation, so I'm wondering if you could comment on whether you think there is any obligation on the other end of the scale, whether it's through the Education Act in terms of dissolution of property or any comments on that.

**Dr Ralph Benson:** Ralph Benson, superintendent of corporate planning, York Region District School Board. The issues of closure are very significant. There are a number of areas in the Education Act and also in the regulations under the act which address school closures. So I think it's outside the jurisdiction of this brief, but there certainly is a need to develop the appropriate agreements between the municipality and the school board, not only the development agreements but the operating agreements, and also how the partnership would be dissolved. Those need to be addressed, and you have to do it at the front end before entering into multi-use agreements. We're very conscious of and supportive of multi-use, but it's responsible to address the dissolution as well in those agreements.

**Mrs Van Bommel:** Thank you for your presentation. In your brief, you mentioned that municipalities often will ask for things that they're not necessarily entitled to when it comes to the planning and applications for school sitings. Could you tell me what kinds of things they would be asking, and would you even want to speculate as to why they would do that?

**Dr Benson:** I will try to answer that. We should always say that the things we're stating here do not happen with all municipalities, but typically municipalities will ask for school bus lay-by lanes, sidewalks and traffic lights. School boards consider these to be municipal responsibilities and, very often, when development occurs, these are obligations that are placed on the developer.

In the case of school boards, there is no resource base. School boards are provided with the money to acquire the land through education and development charges and to build the school facilities themselves through the Ministry of Education, and there are no resources available to do work on municipal lands. So these are among the issues that have faced a number of school boards in recent years.

**Mrs Munro:** As I mentioned to the previous presenters, obviously I found these issues to be quite interesting, and certainly this seems like an appropriate opportunity to bring them forward. I wondered if you'd had conversations with your municipal partners on the submission that you have provided us with. Do you have any sense of their willingness to see this as something they would support in terms of—you know, you've made these recommendations, and looking at the inclusion, wider perspectives in the policy statements and so on and so forth. I was just wondering if you've had a sense of ultimate interest in co-operation from your municipal partners.

**Mr Johnson:** Just a brief comment: I know that every board maintains a different level of co-operation with their municipalities, and so much of it depends upon personalities and past history. I know it's something that all boards continuously work at, but—possibly, some further comment?

**Dr Benson:** Yes, I think that for the most part the municipalities would be supportive. There are areas,



however—and what's very important is that municipalities and school boards are in a superordinate/subordinate relationship. All the authority rests with the municipality and very often there is a conflict of interest between the municipality and the school board. I'll give you an example.

If there are two parcels of land available, one a very desirable one, a municipality may need the block for a park, and the school board will want the same block of land for a school site. At that point, there are different interests, competing interests, and the municipality is in a superordinate position and will reflect its own needs. So that's one of the main arguments where we believe there is a need to enhance the role of the school board in the planning process so that the needs of the community and the students can be met.

Again, where there is a conflict, we believe it's imperative to have an opportunity to appeal to the Ontario Municipal Board. In many cases, that's the only way it

can be resolved. So the two key points in this brief really are to enhance the power of school boards, effectively, which we don't see as being at the expense of municipalities—we see it working hand in hand with municipalities—and to maintain an appeal process throughout.

**The Chair:** Thank you very much, both of you, Mr Johnson and Mr Benson. You have submitted a combined report which, to me, is a very important document. We appreciate your concern. Thank you again.

I just want to remind the committee members that the amendments to Bill 26 shall be received by the clerk of the committee by 4 o'clock on September 27, 2004. The committee must meet for the purpose of clause-by-clause consideration of Bill 26 on Wednesday, September 29, and probably Thursday, September 30, 2004, if need be, here in Toronto. It's going to take place in committee room 1.

I adjourn the meeting.

*The committee adjourned at 1701.*

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Mrs Maria Van Bommel (Lambton-Kent-Middlesex L)

### **Also taking part / Autres participants et participantes**

Ms Andrea Horwath (Hamilton East / Hamilton-Est ND)

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# CONTENTS

Monday 20 September 2004

<b>Subcommittee report .....</b>	<b>G-461</b>
<b>Strong Communities (Planning Amendment) Act, 2003, Bill 26, Mr Gerretsen /</b>	
<b>Loi de 2003 sur le renforcement des collectivités (modification de la Loi</b>	
<b>sur l'aménagement du territoire), projet de loi 26, M. Gerretsen .....</b>	<b>G-461</b>
Ministry of Municipal Affairs and Housing .....	G-461
Hon John Gerretsen, Minister of Municipal Affairs and Housing	
Mr Ken Petersen, manager, legislation and research section, provincial planning and environmental services branch	
Toronto Catholic District School Board .....	G-471
Mr Oliver Carroll	
Ms Renee Sandelowsky; Mr Allan Elgar .....	G-473
Ontario Professional Planners Institute .....	G-475
Mr Donald May	
Mr Gregory Daly	
Urban Development Institute/Ontario .....	G-478
Mr Neil Rodgers	
Greater Toronto Home Builders' Association .....	G-481
Mr Jim Murphy	
Mr Jeff Davies	
Ontario Home Builders' Association .....	G-483
Mr Peter Saturno	
Earthroots.....	G-486
Mr Josh Matlow	
Ontario Nature.....	G-488
Mr Jim Faught	
Urban League of London; Federation of Urban Neighbourhoods (Ontario).....	G-490
Mr Sandy Levin	
Mr Henry Malec .....	G-492
London Development Institute; London Home Builders' Association .....	G-494
Mr Steve Janes	
Pembina Institute.....	G-496
Dr Mark Winfield	
Ottawa-Carleton Home Builders' Association .....	G-499
Mr John Herbert	
Ms Alayne McGregor .....	G-501
L'association du Parti vert d'Ottawa-Vanier / Ottawa-Vanier Green Party Association .....	G-502
M. Raphaël Thierrin	
Ms Susan Smith.....	G-505
Dufferin Aggregates; St Lawrence Cement.....	G-507
Mr Bill Galloway	
Conservation Council of Ontario; Smart Growth Network.....	G-509
Mr Chris Winter	
Ontario Catholic School Trustees' Association .....	G-511
Mr Ken Adamson	
Ontario Public School Boards' Association .....	G-513
Mr Rick Johnson	
Dr Ralph Benson	

G-21



G-21

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## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 29 September 2004

# Journal des débats (Hansard)

Mercredi 29 septembre 2004

## Standing committee on general government

Strong Communities  
(Planning Amendment) Act, 2003

## Comité permanent des affaires gouvernementales

Loi de 2003 sur le renforcement  
des collectivités (modification  
de la Loi sur l'aménagement  
du territoire)

Chair: Jean-Marc Lalonde  
Clerk: Tonia Grannum

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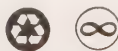
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 29 September 2004

Mercredi 29 septembre 2004

*The committee met at 0909 in committee room 1.*STRONG COMMUNITIES  
(PLANNING AMENDMENT) ACT, 2003  
LOI DE 2003 SUR LE RENFORCEMENT  
DES COLLECTIVITÉS (MODIFICATION  
DE LA LOI SUR L'AMÉNAGEMENT  
DU TERRITOIRE)

Consideration of Bill 26, An Act to amend the Planning Act / Projet de loi 26, Loi modifiant la Loi sur l'aménagement du territoire.

**The Chair (Mr Jean-Marc Lalonde):** I would call this meeting to order. Good morning, everyone. I am pleased to say that we will proceed with clause-by-clause consideration of Bill 26, An Act to amend the Planning Act.

This morning we have a total of 28 amendments that we have to either discuss, pass or amend. We will proceed immediately with section 1, but before we proceed, I would like to say that we have two ministry staff members here, Irvin Shachter and Ken Peterson.

Section 1, a government motion, page 1 of your documents.

**Mr Lou Rinaldi (Northumberland):** Section 1 of the bill, definition of "urban settlement area" in subsection 1(1) of the act:

I move that the definition of "urban settlement area" in section 1 of the bill be struck out and the following substituted:

"'area of settlement' means an area of land designated in an official plan for urban uses including urban areas, urban policy areas, towns, villages, hamlets, rural clusters, rural settlement areas, urban systems, rural service centres or future urban use areas, or as otherwise prescribed by regulation."

**The Chair:** Any questions or comments?

**Ms Marilyn Churley (Toronto-Danforth):** Could I just ask a question? I don't quite understand why you are changing the definition from "urban settlement area" to "area of settlement."

**Mrs Maria Van Bommel (Lambton-Kent-Middlesex):** The government would like to distinguish between the definitions that are contained in the Greenbelt Protection Act and in the Planning Act. Also, from a rural perspective, "urban" implies certain population numbers in

the settlement; if we call it a settlement area, then rural clusters in such communities would also be included in that.

**Ms Churley:** So if I understand what you're saying, you're trying to broaden the definition because—

**Mrs Van Bommel:** We are trying to reduce the confusion around what is urban. As I say, from a very rural perspective, "urban" means something else. "Settlement area" is a term that is better understood.

**Ms Churley:** But you're changing it so that—I'm just trying to understand that. As I understand it, it's called "urban settlement area" because it's an area where development is taking place or will be taking place? I'm still not quite clear on why you're changing that. Perhaps it's just me being dense here, but I don't get it.

**Mr Rinaldi:** I think what we're trying to do is—I mean, the definition is basically the same. People are more attuned to refer to urban as the Torontos and Mississaugas, but yet the terminology really applies to smaller areas that are designated as settlement areas as well. The definition is basically the same; it's just different wording.

**Ms Churley:** And what did you say about the greenbelt piece? What's it called in the greenbelt?

**Mrs Van Bommel:** It's called "urban settlement area."

**Ms Churley:** So if it's "urban settlement area" in the greenbelt, why would you change it here?

**Mrs Van Bommel:** Just simply because we want to avoid any confusion in the definitions.

**Ms Churley:** So if I can understand then, in the greenbelt it says "urban" and here it doesn't. I'm concerned, because some of my amendments are trying to get consistency in this act. I'm concerned that you have a different definition in here, different from the definition in the greenbelt definition. I don't know why you would do that.

**Mrs Van Bommel:** I'm going to refer it to our technical staff. Maybe they can better explain it.

**Mr Ken Peterson:** Certainly. The proposal isn't to change the actual definition itself; it's just to change the name of the term. What we'd heard during consultation was that there was a little bit of confusion because this term was a little bit different than what was in the Greenbelt Protection Act. So we wanted to reduce that confusion.

The other thing is, as has been stated, there's sort of an implied understanding that if it's an urban settlement, it



means something bigger, and if you go back to one of the intents of this particular bill, we're trying to allow municipalities to be in control of their settlement boundaries, if you will. So in some municipalities, settlements can range in size from being very big to very small. The thought was, if we call it an area of settlement, that really captures all the types of clusters of development you might have in a municipality. It exemplifies the fact that municipalities would be in control of all those settlement areas.

**Ms Churley:** Just so I'm clear, then, what is the definition in the greenbelt legislation? Is it the same as this, or is it "urban settlement areas"? I'm not sure from what the parliamentary assistant said.

**Mr Peterson:** The title for theirs is "urban settlement areas." The definitions are virtually the same. There are just very slight differences which I don't think really make that big a difference. They're very similar.

**Ms Churley:** So in your opinion, having it referred to as the "urban settlement area" in the greenbelt legislation and changing it to "area of settlement" here won't make any difference, in terms that it won't cause any problems later on down the road?

**Mr Peterson:** That's my opinion.

**Ms Churley:** OK.

**The Chair:** Any other questions or comments?

**Mrs Julia Munro (York North):** I want to come back to the same issue. Because there is so little difference, I guess that's why it's a question.

If I understand correctly, in both of these definitions we're talking about lands that are already designated in an official plan. Wouldn't the municipality already have established its jurisdiction, if you like, over these areas because they fall within their official plan?

**Mr Peterson:** With respect to that, I think that within municipal official plans—and, of course, because Ontario is so big and there's such a variation between municipalities—municipalities could actually identify their settlement areas very differently. The thought was, let's try to be as broad as possible in terms of describing what those little areas of development might be. I think it really just reflects the fact that across Ontario there are differences in terms of how municipalities describe their areas of settlement.

**Mrs Munro:** Just going back to Ms Churley's point, in the greenbelt legislation the term "urban settlement area" is used. Is that correct?

**Mr Peterson:** That is correct. Yes.

**Mrs Munro:** And in this piece of legislation the proposal is to have the same geographic area now described as an area of settlement. Is that what we're being asked to do?

**Mr Peterson:** Correct.

**The Chair:** Any more questions or comments?

There being none, shall the amendment carry? Against? It is carried.

Shall section 1, as amended, carry? Against? It is carried.

Section 1.1, an NDP motion. It's on page 2.

**Ms Churley:** I move that the bill be amended by adding the following section:

"1.1 Section 2 of the act, as enacted by the Statutes of Ontario, 1994, chapter 23, section 5 and amended by 1996, chapter 4, section 2 and 2001, chapter 32, section 31, is amended by,

"(a) striking out 'shall have regard to' in the portion before clause (a) and substituting 'shall be consistent with'; and

"(b) adding the following clause:

"(e.1) the protection of source water."

May I explain what this is about?

**The Chair:** Yes, you can go ahead.

**Ms Churley:** While this section of the existing act is not open in this proposed amending bill, it needs to be amended for the purposes of consistency. Therefore, the motion, as I understand it from talking to the clerk, is not out of order because the motion seeks to amend a section of the act that is not already open in the bill. It's my understanding from what I've been told by legal counsel that an amendment to a part of a bill that is not open is not out of order if the amendment is "necessary to avoid an inconsistency, an error, a conflict in language or to correct a statutory reference in the bill, as amended." That's why I'm doing that: to make sure the "shall be consistent with" comes throughout the bill.

0920

Clause (b), "adding the following clause," I think is pretty self-evident. Again, for the purposes of consistency, there should be—and I raised this in the committee hearings—an explicit reference to source water protection being a matter of provincial interest. Otherwise, a discrepancy will exist between the proposed—and let me point out again that it is still proposed—provincial policy statement and the government's pledge of source water protection. In the current section 2 of the Planning Act, references to protecting water supplies and quality are scattered all over the place, and it does not specifically identify protecting it from the source as a matter of provincial interest. The fact that you, the government, have pledged to introduce specific source water protection says that indeed source water protection constitutes a matter of provincial interest. That's the rationale for both of my amendments here.

**The Chair:** Comments?

**Mrs Van Bommel:** I have real concerns about this in terms that I think we're adding to the provincial interests. We already have water mentioned in part I, section 2 of the act. It refers to things such as "the protection of ecological systems." We have the "conservation and management of natural resources ... the supply, efficient use and conservation of energy and water...." It also refers to "the protection of public health and safety." I think that includes the protection of source water. So at this point, I don't think we need to add to the list. I'm not necessarily sure it's even within the scope of this bill to do that.

In terms of "shall have regard to," I don't feel that's necessarily appropriate either. I think that "shall have regard to" is sufficient because it is a broader statement

of provincial interests, and we need to allow some flexibility.

**The Chair:** Any comments, Ms Churley, regarding Mrs Van Bommel's comments?

**Ms Churley:** One of the major points when we were discussing this bill was around the necessity—and I supported it strongly, because our government, certainly with the green Planning Act we brought in and which the Tories threw out, made it very clear that all policies had to be “consistent with,” and we’re glad to see that that’s been brought back, as opposed to “have regard to.” But I’ll just reiterate that in order to have consistency, it’s important that this be put in the bill. If you look at the bill—I won’t take the time to read it all now, but as I said, there are some inconsistencies in the bill, and this would clarify that.

Again, when you look through the existing policies, there is nothing explicit in reference to source protection. Yes, water is mentioned, but that’s a generally new term. It has been around for some time, but it’s only over the past few years that we’ve really defined and clarified what we mean by “source protection” and the incredible scope that involves. In my view, without that wording in here, you don’t have strong enough language to support your own government policy.

Having said that, I don’t know if you want to add anything else. I think it’s really important to make these amendments to strengthen this bill.

**Mrs Van Bommel:** As a government we’re certainly very concerned and, as you have stated, we have proposed legislation on protection of source water. As the minister needs to act on provincial interests, I’m quite satisfied that, within the parameters we already have, the minister will be able to act on source water.

**Ms Churley:** Perhaps it depends on who the minister is.

**Mrs Van Bommel:** I have no concerns about my minister.

**Ms Churley:** Maybe I do and maybe I don’t. My point is that ministers come and go, governments come and go, and interpretations, therefore, can be changed at the turn of a dime. So I would ask for your support and I would ask for a recorded vote on this.

**The Chair:** A recorded vote has been asked for.

#### Ayes

Churley.

#### Nays

Dhillon, Munro, Qaadri, Rinaldi, Van Bommel.

**The Chair:** The amendment is defeated.

We will move on to section 2: subsection 3(5), a PC motion on page 3 of your documents.

**Mrs Munro:** I move that subsection 3(5) of the act, as set out in section 2 of the bill, be struck out and the following substituted:

“Regard for policy statements

“(5) A decision of the Lieutenant Governor in Council, the council of a municipality, a local board, a planning board, a minister of the crown and a ministry, board, commission or agency of the government, including the municipal board, in respect of the exercise of any authority that affects a planning matter, shall have demonstrated regard for the policy statements issued under subsection (1).”

**The Chair:** Questions or comments? Can you explain?

**Mrs Munro:** Yes. The reason that this has been proposed reflects the kind of division within the community that we heard in the public hearings over the question of the wording between “be consistent with” and “shall have regard for.” Many of the speakers spoke of the possible and evident inherent contradiction that sometimes exists in provincial policy statements and the need to find a balance when they’re making decisions with regard to a number of policy statements that deal with different aspects that may have a fundamental conflict between them. That’s the reason why we have proposed this amendment.

The critics of the wording have suggested that there is no method that gives confidence that “have regard for” has really been done in a thorough way. This amendment, then, puts the onus of responsibility on the proponent. They must demonstrate a regard, so if there is a fundamental tension between two policy statements and, in trying to achieve that balance, the proponent has done the homework and found out what the issues are to be balanced, they therefore have provided a “demonstrated regard.” It eliminates the situations where both municipalities and others involved in a planning exercise have to deal with what are essentially conflicting issues that need to be balanced.

0930

**Ms Churley:** I will, not surprisingly, be voting against this amendment. What the Conservatives are trying to do here is bring it back to where the Conservatives changed it after they got in power and changed the green Planning Act.

I’d like to add that not only did they remove the green Planning Act to bring back the previous Planning Act, but actually changed that to make it more regressive. If we were to go back to “have regard for,” the policy and the inconsistencies in that—that philosophy has spelled sprawl for Ontario. Although I have some problems with some of the direction and inconsistencies in this bill, which I hope some of my amendments can fix, I certainly don’t support going back to “have regard for,” where somebody, the OMB or municipality or whatever, can pick it up, look at it, say, “Yep, we looked at it, we had regard for it,” and throw it away. Given the problems we have with sprawl these days, we certainly can’t go back to that direction.

**Mrs Van Bommel:** We can’t support this motion either. We talk about balance, and during the hearings we heard from proponents who wanted something as strict as “have to conform with.” We also heard from the sector that you spoke of, which is asking for “have regard to.”



We feel that, in terms of balance, “be consistent with” is that middle ground, that balance point. “Demonstrated regard” is a weaker standard than “be consistent with.” We have seen the results of “have regard for,” demonstrating that it just requires the decision-makers to illustrate how they had regard. I don’t think it fundamentally changes the issue that we have here, which is concern about how municipalities and decision-makers make their decisions in terms of provincial policy statements.

**Mr John O’Toole (Durham):** I’m pleased to be here this morning, because having served on local and regional councils, I know just how important this Planning Act is. The inconsistencies that I see here are surprising. That’s why I’ve taken the time this morning to come in.

The motion here, moved by the opposition, really is to address an issue that for years, even from the time the Planning Act was amended by the NDP—the debate around “consistent with” and “regard to” has been universal. What it really does is exempt any discretion from the local planning authorities to interpret the uniqueness of their own particular application that’s before them in their riding. That’s why I think you will find yourself somewhat boxed in because of the overlapping nature of various policy statements, whether it’s wetland, use of agricultural land or land for development.

Then when I look at some of the further thrusts or philosophy of the bill, the exemption provisions by the minister’s oversight is another obvious inconsistency. So I would encourage you to adapt some flexibility to give local municipalities—with the oversight of the ministry; I completely concur with that—the ability to interpret their own unique applications.

I know Mr Rinaldi, as a former mayor of a small community, would know just how important this debate is. I’d be interested to hear what he thinks about giving more legitimacy to local planning councils.

That’s my response. I will certainly be supporting this amendment. Mrs Van Bommel, your impressions, to me, don’t reflect the rural nature which you’re really supposed to represent first, not just the government-whipped answer to this question. But I think I’ve made my argument with respect to giving local municipalities some ability to interpret—with diligence, the oversight of the minister at the end of the day and appeals with, of course—their own planning needs for their own community.

**Mrs Van Bommel:** I would like to add, for the record, that AMO, the Association of Municipalities of Ontario, which includes ROMA, the rural component of AMO, have supported “be consistent with.”

**Mrs Munro:** Perhaps just to give you a little history, they also supported “shall have regard for” when it was brought before this Legislature.

**Mrs Van Bommel:** Obviously it didn’t work.

**Mrs Munro:** That was after they’d had the experience with the NDP on “shall be consistent with,” just as a historical footnote.

**Ms Churley:** Just to be consistent here, the new green Planning Act barely had time to be implemented, and

then, of course, there was a change of government, who threw that out. So actually, they did support the approach we took at that time. As you know, the Tories threw it out, so that wasn’t really consistent with what really happened. It’s having regard for the NDP changes but, really, it was a short-lived bill and legislation because, of course, the act was changed again shortly after by the Tories.

**The Chair:** Other comments or questions? If none, all those in favour of the amendment for section 2, subsection 3(5)?

**Ms Churley:** Recorded vote.

**Mr O’Toole:** Just for the clerk: I am actually subbed on this committee, but I’m on another committee.

**The Clerk of the Committee (Ms Tonia Grannum):** I did not receive a sub slip.

**Mr O’Toole:** OK. So Mr Ouellette is—so I can’t vote on this.

**The Clerk of the Committee:** No, you can’t.

**Mr O’Toole:** Mr Ouellette is subbed in, I think?

**The Clerk of the Committee:** No, it’s Julia subbed in for Jerry Ouellette, and John Yakabuski is the other voting member.

**Mr O’Toole:** I was supposed to be subbed for Yakabuski.

**The Clerk of the Committee:** Julia Munro is subbed for—oh, sorry, you’re supposed to be subbed in? I did not receive a sub slip. If you can get me a sub slip in three minutes, it’s valid.

**The Chair:** OK, we’ll proceed with the vote immediately, then. Sorry.

**The Clerk of the Committee:** Three minutes.

**The Chair:** We could give them three minutes?

**The Clerk of the Committee:** No, no.

**The Chair:** Sorry.

**Mr O’Toole:** Just a clarification: Mr Ouellette’s sub slip is in?

**The Clerk of the Committee:** Yes, Julia Munro is substituted for Jerry Ouellette.

**The Chair:** So we’ll proceed with the vote immediately. It’s a recorded vote in favour of the—

**Mr O’Toole:** I need to clarify this, because I’m going to leave. But I want to make sure, if I go to our whip’s office, that we actually have Julia subbing for Jerry Ouellette. If Jerry Ouellette was to come in, then—he’s supposed to be here at 10 o’clock, is the point.

**The Clerk of the Committee:** If Jerry Ouellette comes in at 9:39, he will be a member present, not of the committee, because within the first half-hour, he can—

**Mr O’Toole:** He won’t be here till 10.

**The Chair:** We’ll proceed with the vote immediately, then.

**Ayes**

Munro.

**Nays**

Churley, Dhillon, Qaadri, Rinaldi, Van Bommel.

**The Chair:** The amendment is defeated.

We'll move on to section 2, subsections 3(5), (6), (6.1) and (6.2). It's an NDP motion.

**Ms Churley:** I move that subsections 3(5) and (6) of the Act, as set out in section 2 of the bill, be struck out and the following substituted:

"Consistency with policy statements

"(5) A decision of the council of a municipality, a local board, a planning board, a minister of the crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter, shall be consistent with policy statements issued under subsection (1) and with the following acts:

"1. Greenbelt Protection Act, 2004 and any successor to it.

"2. Any act that deals with the protection of source water.

"3. Any act that deals with urban growth.

"4. Endangered Species Act.

"5. Niagara Escarpment Planning and Development Act.

"6. Oak Ridges Moraine Conservation Act, 2001.

"Advice

"(6) Comments, submissions or advice that affect a planning matter that are provided by the council of a municipality, a local board, a planning board, a minister or ministry, board, commission or agency of the government shall be consistent with policy statements issued under subsection (1) and with the acts listed in subsection (5).

"Provincial interest

"(6.1) For the purpose of this act, a matter is of provincial interest if it is set out in the schedule and the minister may make regulations,

"(a) adding matters to the schedule; and

"(b) prescribing restrictions and rules relating to matters set out in the schedule.

"Criteria

"(6.2) In order for a matter to be a matter of provincial interest, one or more of the criteria set out in section 2 must be relevant to the matter."

0940

**The Chair:** And the rationale for this amendment?

**Ms Churley:** Sure. I'll try my best here. I know it's a bit complicated. The revised Planning Act, in the current form, in my view, doesn't go all the way in terms of adding, at least as far as it could, good planning, because it does not spell out what policies in related legislation official plans are to follow or show consistency with. As a result, there's a real risk of inconsistency throughout this bill, and I'm trying to fix that once again. I think we need to be as clear as possible. There's no schedule here of with what provincial policies official plans must be consistent—as you know, some of our deputants pointed that out and expressed real concern about that—other than reference to the provincial policy statement in the explanatory note.

How about the greenbelt legislation, the growth management plan? I'm concerned about this because maybe

its omission is deliberate, considering that the government's position on aggregates right now does not match what the government is saying in the provincial policy statement or the greenbelt legislation in its current form. So we're already seeing inconsistencies with the position of the aggregates.

Without a doubt, the source water protection legislation must be included. I've said that before, and it will come up in other amendments. It's got to be included in the provincial policies referred to by subsection 3(5). Source water protection absolutely has to be central in land use planning and not added on an ad hoc basis. It's just so critical, given what we know today about the impacts of contaminating our water.

I want to comment as well regarding subsections 3(6.1) and (6.2). Section 2 of the existing act provides the criteria for what can constitute a matter of provincial interest, and that's good. That's a first step. A mechanism that tables specific areas that are deemed matters of provincial interest is needed once again in the interests of transparency and the government accepting responsibility and accountability for its promise to protect critical ecologically sensitive areas, prime agricultural land and our natural heritage. So by explicitly tabling areas that represent a matter of provincial interest makes the government accountable to live up to these stated commitments.

You'll notice that under section 10.1 of the bill, which we'll be getting to, I get very specific about what should be in that schedule. We'll be getting to that a little later. I've stated the list for you for areas that fit the bill—and there's no pun intended here; it does fit the bill in more ways than one—as matters of provincial interest. Those would be the greenbelt hot spots. By declaring those areas as matters of provincial interest, the government, the minister, can act to protect them via a government change to the Planning Act. They are saying now that they can't protect those hot spots, and anybody who is following the greenbelt legislation will be very aware of what those hot spots are. Many of them are before the OMB right now. The minister can act to protect them via a government change to the Planning Act that allows for ministerial intervention in matters deemed to be of provincial interest. Obviously, I have a motive here. We're trying to save those greenbelt hot spots, and if they're listed here in the schedule, then the minister can actually step in and save them.

Development applications involving these areas are either before the OMB right now or they're pending or can be expected at some point. As I said, I've put in an amendment to section 10 of this bill that would make the act applicable to those hearings already in the hopper, thus creating the opportunity for the government to rectify poor actions or the lack of action it has taken regarding some of these hot spots.

I want to give an example, and I've been raising this one in the Legislature on many occasions and before committee here: the failure to stop the Castle Glen development on the Niagara Escarpment from the outset



or to include Simcoe county in greenbelt legislation. That's all about the leapfrog development that's happening.

Subsection 6(2) is a measure to make what constitutes a matter of provincial interest explicit and transparent. It's also a safeguard that the minister intervenes in matters of provincial interest.

So that's what this is all about. It's trying to be very explicit and clear about what should be included in here.

**Mrs Van Bommel:** This is quite an extensive motion. I'm looking at the first part, where we talk about consistency with provincial statements. The provincial policy statement at this time is still under review and going through a consultation process.

You've listed many acts that actually exist already, and these acts have processes already in place for their implementation. You also talk about the Greenbelt Protection Act and any successor. Again, that is legislation that is still being developed at this point.

All of these things, especially when we talk about things in the act that deal with the protection of source water or any act that deals with urban growth, create uncertainty for municipalities and for individuals who would make application under the Planning Act. It also, in a roundabout way, ties the hands of the Legislature in the future, and I have your concerns about doing that.

I don't think there's really a need at this point to list the bills. We have provincial interests already recognized under section 2 of the Planning Act. I think that sometimes when we create lists, we cause further confusion.

One of the things that I noticed too—and you mentioned Castle Glen in particular—decisions have already been made, so we're talking about going back. I'm not sure it's within the scope of this bill to do that. It's certainly extraordinary to be targeting specific development issues and interests. I think, from the list that I'm looking at, that's essentially what's happening.

**The Chair:** Any other questions or comments?

**Ms Churley:** Just to clarify why I listed those in particular: As you know, the greenbelt legislation came before a committee. Were you sitting on that?

*Interjection.*

**Ms Churley:** Yes, I thought so. These hot spots were identified as very environmentally sensitive lands, which, as I said, are before the OMB or are going to the OMB or whatever. I understand what you've said about retroactively going back, but of course, that's what declaring a provincial interest can be all about. I'm including them in here because we already know that development shouldn't happen on these lands. That was pointed out very clearly during the greenbelt hearings. It seems to me that we have an opportunity here, if we include them in the schedule, to protect them. Otherwise, I don't think we're going to have that opportunity, and this is a good opportunity for the government to include them and make sure that those environmentally sensitive lands are protected. That's why I'm putting them in here. I don't see any other way, in the existing processes right now, to put a stop to these lands being developed, and they really shouldn't be.

Could I have a recorded vote on this?

**The Chair:** Definitely. Any more questions or comments? If none, those in favour of the NDP amendment to section 2, subsections 3(5), (6), (6.1) and (6.2)?

**Ayes**

Churley.

**Nays**

Dhillon, Munro, Qaadri, Rinaldi, Van Bommel.

**The Chair:** The motion is defeated.

We'll move on to page 5, which is a PC motion on section 2, subsection 3(6).

**0950**

**Mrs Munro:** This is consistent with an earlier motion that I presented. So I will withdraw it.

**The Chair:** Thank you. Shall section 2 carry? Against? Two against. It is defeated. Sorry; section 2 is carried because there's no amendment.

Shall section 2 carry? All those in favour of section 2, as it appears in Bill 26?

**Mrs Van Bommel:** There is confusion here.

**The Chair:** We're voting on section 2. The amendments have been defeated.

**Mrs Van Bommel:** Section 2 as it now stands? OK. Yes.

**The Chair:** In favour of section 2? Against? Section 2 is carried.

Section 3, page 6, which is a government motion. Mr Qaadri.

**Mr Shafiq Qaadri (Etobicoke North):** Subsection 3(2) of the bill, amending subsection 17(51) of the act:

I move that subsection 17(51) of the act, as set out in subsection 3(2) of the bill, be struck out and the following substituted:

"Matters of provincial interest

"(51) Where an appeal is made to the municipal board under this section, the minister, if he or she is of the opinion that a matter of provincial interest is, or is likely to be, adversely affected by the plan or the parts of the plan in respect of which the appeal is made, may so advise the board in writing not later than 30 days before the day fixed by the board for the hearing of the appeal and the minister shall identify,

"(a) the provisions of the plan by which the provincial interest is, or is likely to be, adversely affected; and

"(b) the general basis for the opinion that a matter of provincial interest is, or is likely to be, adversely affected."

**The Chair:** The reason behind this amendment?

**Mrs Van Bommel:** This amendment, of course, establishes the authority of the minister to declare a provincial interest. It also addresses concerns that we heard during the hearing that the applicants and the public wanted to know what kinds of provincial interests the minister was

addressing and have some indication of why. So this will give the minister the opportunity, or requires the minister to identify the general basis for the declarations.

**Ms Churley:** First, just a question about procedure here. The next amendment is mine, and it refers to the same section. If this amendment were to pass, would it rule mine out of order?

**The Chair:** Yours would be redundant, yes.

**Ms Churley:** OK. Well, then let me take this opportunity to talk about why I think this amendment before us doesn't go far enough, and where mine, which I presume in a few minutes is going to be ruled out of order because they, the Liberals, have the majority and, I expect, will be supporting theirs—but I would urge you to vote this one down.

If you look ahead to the next amendment, which is going to be ruled out of order if you vote this one in, you will see that the wording is the same until you get to the (a), (b), and (c) of (51). What is different is this: The measure the NDP has put in is stronger because it requires the minister to spell out how it is a matter of provincial interest, and he has to declare the reason as to why the matter is of provincial interest in accordance with section 2 of the act. That is the difference. It's simply taking it a step further.

Section (b) of the government amendment just says, "the general basis for the opinion that a matter of provincial interest is, or is likely to be, adversely affected." You may think that this is semantics, but it isn't. Again, for the purposes of transparency, clarity and going as far as possible in terms of protecting our sensitive lands, I think it's important that the minister be very, very clear and declare, not just generally, the reason as to why the matter is of provincial interest, and include details for the public, for anybody whose interest could be adversely affected. It's also making it transparent in that it's not just done behind closed doors with just general information being given to the public, but with very clear and precise reasons.

I don't think it's a whole lot different. It's just that mine is much more clear and is stronger. I would urge you to vote the Liberal amendment down. I would urge the Liberals to do that and vote for mine, which is coming up next.

**Mrs Munro:** I would just like to comment in the same vein as Ms Churley has, in that it was certainly something we heard in the hearings, the concern over the lack of transparency in the process as outlined in this section. While I see that the government has made some suggestions to provide a little greater transparency—at least a rationale—clearly the other motion has more detail and I think does give a greater assurance to anyone in terms of the minister's decision-making.

I think it's particularly significant to note, in this government amendment that we're looking at, that the wording from the original bill has been maintained with regard to the opinion of the minister: "if he or she is of the opinion." There were many people who felt this left open a lot of opportunity that really didn't speak to those issues of transparency.

**Mrs Van Bommel:** I would like to address that whole issue of transparency. Again, we're talking about the declaration of provincial interest. I know there were concerns expressed about that. We feel that by saying the minister would indicate the general basis of his opinion, that would help to alleviate that concern.

I know there's certainly a concern that the minister would arbitrarily use his powers under the declaration of provincial interest, but historically there's no evidence of that. The ability to declare a provincial interest was first instituted by the Davis government. We have seen many governments of all political stripes since that time. Historically, we have exactly four incidents or events where the minister declared a situation of provincial interest. So I have no concerns as to the ministers using this arbitrarily. There is no evidence and I don't anticipate that anyone would be able to show that there was abuse of this ability.

**Mrs Munro:** I appreciate the comments made, but I would remind you of a comment the minister himself made last week in the hearings, in response to a concern that I raised. He said that he wouldn't abuse the power. While that is certainly appropriate and what we would expect, the point is that there is the suggestion that there's the opportunity for abuse. For him to suggest that he wouldn't use it is a declaration that there is still an opportunity. I think that the comments made by both the opposition parties is a way to provide the minister with some legislative tools by which he could not be accused of doing that.

1000

**The Chair:** Any other comments or questions? Seeing none, those in favour of the government motion on subsection 3(2) of the bill, subsection 17(51) of the act? Against? It is carried.

The next one is an NDP motion: subsection 3(2) of the bill, subsection 17(51) of the act. It is ruled out of order.

We'll move on to the next one.

**Ms Churley:** Just for the record, Mr Chair, I'd just like to say how disappointed I am that we didn't get to my stronger amendment.

**The Chair:** Thank you. The next one is a PC motion: subsection 3(2) of the bill, subsection 17(51.1) of the act.

**Mrs Munro:** I will be withdrawing this, as this is merely to remain consistent with a motion I presented, and it was defeated.

**The Chair:** So it is withdrawn?

**Mrs Munro:** Yes.

**The Chair:** The next one is a PC motion: subsection 3(2) of the bill, subsection 17(52) of the act, page 8.

**Mrs Munro:** I move that subsection 17(52) of the act, as set out in subsection 3(2) of the bill, be struck out and the following substituted:

"Notice

"(52) The minister shall give public notice to any municipal council, planning board, local board, and any board, commission or agency of the government, including the municipal board, that is affected by any declaration by the minister of a matter of provincial interest, before taking any action under subsection (51).



"Hearing

"(52.1) The minister may hold a hearing before taking any action under subsection (51)."

**The Chair:** The rationale behind this amendment?

**Mrs Munro:** Again, this is in the spirit of providing the minister with some specific tools that would help to make it clear to everyone involved in the decision-making process with regard to his accountability and transparency. You will notice that this suggests in (52.1) that he "may hold a hearing." We are recommending that a greater public accountability in this process would lead to further confidence in the process and would provide everyone, then, with an understanding of what, in his or her opinion, had been a provincial interest.

I would suggest to the government members that this is not a particularly binding kind of process. If you look at the government amendment that was just proposed and accepted, it essentially suggests a mechanism for doing what you have agreed to in subsection (51). So I would ask for your consideration to simply provide the minister with an optional tool if you accept this amendment.

**The Chair:** Questions or comments? Seeing none, those in favour of the PC motion on page 8? Against? It is defeated.

Page 9: a PC amendment to subsection 3(2) of the bill, subsection 17(54) of the act.

**Mrs Munro:** I move that subsection 17(54) of the act, as set out in subsection 3(2) of the bill, be amended by striking out "vary."

I think it's really important to stop and take a moment to look at the fact the bill has suggested "confirm, rescind or vary" the outcome of the process. I think this has extraordinary implications. It's one thing for a minister, and obviously the cabinet, to say yes or no. I believe when the parliamentary assistant referred to other historic occasions when cabinet used its power, it was in a yes/no kind of situation. What you're suggesting by including "vary" in this piece of legislation is not simply support or denial of the process; you're now going to put yourself in the position of micromanaging a particular situation.

I really wonder whether or not people have considered the implications of "vary." You're saying to the people who have been involved in a process that could represent literally years of work and millions of dollars that at the end of the day a group of people who can act in private, who may or may not have looked at all the evidence, who may or may not have the kind of expertise that is represented by all the planners and people who have been involved in the process as well as the expertise and legal guidance the OMB have, can suddenly come out and vary what the OMB has said.

I think this will create an enormous amount of instability within the field because of the fact that it's not the historic power of approval or disapproval; it is actually getting into the details of a particular proposal and then rewriting it. I think this is something that, quite frankly, I'm surprised the government wants to get involved in, because of the complexity of varying an outcome that has gone through a very public, expensive

process and then you're going to get in there and micromanage. That's why we're putting this forward: to leave it at the yes/no power, as opposed to getting involved in the details.

**The Chair:** Is the government ready to explain or give information on this concern?

**Mrs Van Bommel:** We can't support this particular motion. This is really, as you have said, Mrs Munro, an all-or-nothing approach. You mentioned yourself that there is a lot of time that could be spent on an issue, a lot of dollars that could be spent on an issue, and we then have a situation where the proponent could lose all of that simply over one modification to the decision. We want to be able to allow that to happen and not everything is suddenly lost by a proponent.

The provision has historically been in the act, and then in 1996 your government took it out. We're just restoring what was there originally.

1010

**Ms Churley:** I understand what Mrs Munro is saying here, but I don't support this particular amendment. Having sat in cabinet, I certainly understand what you're saying. Occasionally, appeals come before cabinet where we have to make decisions based on far less information than perhaps the original decision-making body. It's rarely used, but I think it's important to have it in there. At the end of the day, it's elected politicians who are accountable. You do, and can, have situations from time to time where a small thing can be altered—declaring a provincial interest, for instance—without throwing the whole thing out and starting all over again. It's important that the cabinet have an opportunity to fix something that is fixable.

That has to be in there. I can't remember if we used that or not, but I do believe it needs to be brought back in. Again, I come back to our needing transparency and openness in all decisions that cabinet makes. But at the end of the day they are accountable, and I believe they need to have the power to vary decisions from time to time, if necessary. Believe me, cabinet tries to stay away as much as possible from varying decisions. Why get involved in that hornet's nest, which it often is when it comes down to that?

If my memory serves me correctly, what sometimes happens is if there is a big fight and the OMB makes a decision and one side is unhappy about a particular piece of it, sometimes both sides can agree that perhaps a slight variation can be made to try to deal with a situation that may have been resolved at the OMB but continues to create conflicts in the community. If my memory is correct, that is why that used to be in the Planning Act.

**The Chair:** Any other comments or questions? If none, those in favour of the PC amendment? Against? It is defeated.

The next one is on page 10, a PC amendment to subsection 3(2) of the bill, subsection 17(55) of the act.

**Mrs Munro:** Mr Chair, this is the same as the earlier ones, so I will withdraw it.

**The Chair:** It is withdrawn.



We'll now vote on section 3. Those in favour of section 3, as amended? Against? It is carried.

We'll move on to section 4, an NDP motion, page 11.

**Ms Churley:** I move that subsection 4(3) of the bill be struck out and the following substituted:

"(3) Subsection 22(6) of the act is repealed and the following substituted:

"Refusal and timing

"(6) Until a council or planning board has received any fee under section 69 and the prescribed information and material required under subsection (4), the information or material that the council or planning board considers it may need under subsection (5), the information and material required under the official plan or a bylaw of the municipality and any information that the municipality or planning board considers necessary to meet the requirements of the policy statements issued under section 3,

"(a) the council or planning board may refuse to accept or further consider the request for an amendment to its official plan; and

"(b) the time periods referred to in clauses (7)(c) to (d) do not begin."

**The Chair:** Can you give an explanation of this amendment?

**Ms Churley:** Sure. This issue was actually brought up by some of the deputants; I refer in particular to the Pembina Institute deputation. It talked about Bill 26 being amended to provide a definition of "complete application." They spelled out what they believed a complete application should be defined to include. For municipalities to comprehensively assess if applications made before them meet official plans and, by extension, provincial policies and regulations, they need a complete set of information. I know that municipalities have expressed concern that, under the current definition of "complete application," what's happening is that developers don't have to include many relevant pieces of information that are key for the municipalities to properly evaluate the applications against the PPS and related legislation; for instance, things like traffic-impact studies, the implication for infrastructure and natural heritage and other environmental concerns. What this amended clause is intending to do is ensure that the clock on the review period does not start until all of the necessary information is given to the municipal council to evaluate the application. Once that's provided, the clock should start ticking. That has been a problem that has been articulated time and time again.

This, I think, is a sensible, reasonable amendment that would give the municipalities the tools that they need to assess the applications before them with all of the information that the developers have before them. Right now, it's not a level playing field in that way.

**Mrs Van Bommel:** I'm afraid we're not going to be able to support this motion. Basically, we understand the issue of the complete application, but what concerns us is the part of the motion that says, "Any information that the municipality or planning board considers neces-

sary..." There is an open-ended process. It could vary at any point. It would say that there's uncertainty for the applicants, in that they don't know what is required of them, because the municipality can make a decision that it requires additional information that the applicant may not anticipate. There's the potential that there would be no limit to what would be required of an applicant. It does really concern us that applicants should at least know in advance what is going to be required of them. There is a need for certainty here. We understand, as I said, the issue around the definition of a complete application, but it is that particular part of the amendment that concerns us the most.

**Ms Churley:** So would you consider amending the amendment to strengthen that particular piece of it? I understand, from what you were saying, you agree with the general thrust to allow the municipalities to be provided with more information, but you're concerned with the open-endedness of this. We could stand it down and try to work out an amendment that would perhaps strengthen that one concern you have, or clarify that concern.

**The Chair:** We're getting clarification there.

**Mrs Van Bommel:** Yes, I'm getting clarification. We are already looking at that issue—and I'm just reminded of that—through the planning reforms that we have in place. So the issue of the complete application is being addressed in that respect. As I said, we understand that concern, but we don't feel that it needs to be addressed through this particular bill.

**Ms Churley:** We may need more explanation from staff here, because I'd like to understand. If it's not included in this act—because this is the act to amend the Planning Act; it seems to me the proper place to put it—under what processes would you be working on this, and what would it be included in?

**Mr Peterson:** As you know, the government has undertaken a planning reform initiative that involves a number of components: OMB reform, the provincial policy statement review and also a look at what other changes need to be made to the Planning Act, including planning tools. So it's within the broader context of that planning reform initiative in terms of what additional changes may be required to the Planning Act that that's being looked at comprehensively.

1020

**Ms Churley:** Perhaps this is more of a political question, and if it is, I would go back to the Liberal politicians. Because this is just such a clear matter, perhaps the wording of my amendment could be changed. Why would it not be included in this? Do you feel, for instance, that more consultation is needed around it, or what? Is that a political question? It could be included in this, right?

**Mrs Van Bommel:** I think, very rightly, there is consultation, and we are going through that. We've done consultation on this and we are going through all that information, so I think we need to wait for that review to finish.



**Ms Churley:** I gave you a little bit of an out there by suggesting it might get consultation, which you picked up on right away. I understand you're not going to support this, but I just want to say for the record that we've heard of this complaint time and time again, and it is really vital to fix.

I see no reason to not attempt to be very clear in these amendments that we're listening and change what I think we all would agree is a flaw in the system right now. It is making it very difficult for municipalities. So I still contend that it fits nicely within these amendments to the Planning Act, and this is a good opportunity for us to get it right.

**Mrs Van Bommel:** As a government, we are addressing that particular issue.

**The Chair:** Any more questions or comments?

**Ms Churley:** Could I have a recorded vote?

**The Chair:** We'll proceed with the recorded vote.

### Ayes

Churley.

### Nays

Dhillon, Munro, Qadri, Rinaldi, Van Bommel.

**The Chair:** The motion is defeated.

We'll move on to page 12, a government motion.

**Mr Rinaldi:** I move that subsections 22(7.1) and (7.2) of the act, as set out in subsection 4(7) of the bill, be struck out and the following substituted:

"Restriction re: appeal

"(7.1) Despite subsection (7), a person or public body may not appeal to the municipal board in respect of all or any part of a requested amendment if the amendment or part of the amendment proposes to alter all or any part of the boundary of an area of settlement in a municipality or to establish a new area of settlement in a municipality.

"Same

"(7.2) Despite subsection 17(36), a person or public body may not appeal to the municipal board in respect of the refusal of the approval authority to approve any part of a plan that proposes to alter all or any part of the boundary of an area of settlement in a municipality if the part of the plan formed all or part of an amendment requested under subsection (1) or (2).

"Same

"(7.3) Despite subsection 17(40), a person or public body may not appeal to the municipal board in respect of any part of a plan that proposes to alter all or any part of the boundary of an area of settlement in a municipality or to establish a new area of settlement in a municipality if the part of the plan formed all or part of an amendment requested under subsection (1) or (2).

"Exception

"(7.4) Despite subsections (7.1), (7.2) and (7.3), a person or public body may appeal to the municipal board

in respect of any part of a plan that proposes to alter all or any part of the boundary of an area of settlement in a lower-tier municipality or to establish a new area of settlement in a lower-tier municipality if that part of the plan conforms with the official plan of the upper-tier municipality."

**The Chair:** Could you explain the rationale behind this motion?

**Mrs Van Bommel:** I'm just going to go through it a section at a time as we proceed under subsection (7.1). Essentially, this is to provide consistency with section 1, where we talk about areas of settlement.

Subsection (7.2) addresses the issue of the right to appeal an approval authority's decision. Again, because we want to tighten up the act and create consistency, we have said that a proponent who appeals the boundaries adjustment on settlement areas to a municipality can appeal that. We also wanted to include in that the approval authority's decision. So this is basically a technical tightening up, and if there are any questions, I'm sure our technical staff would be happy to deal with those.

Again, under subsection (7.3), we're talking about the issue of areas of settlement. The exception, of course, is that this maintains the right of appeal of a lower municipality's decision versus that of an upper tier's decision. This is in keeping with the direction of our provincial policy statement and also our proposed growth management strategy and plan.

**The Chair:** Questions and comments?

**Ms Churley:** Yes, it was subsection (7.3) and subsection (7.4). The parliamentary assistant explained it to some extent. I just want to be sure I understand the implications of this, particularly the exception in (7.4). You said that this is to make it consistent with what, sorry? With your new provincial policy statement or—

**Mrs Van Bommel:** This is the direction the provincial policy statement—

**Ms Churley:** OK.

**Mrs Van Bommel:** So an upper-tier government, an upper-tier municipality, under the official planning, would have jurisdiction over the lower tiers in terms of their official plans, so if—

**Ms Churley:** See, that's what—sorry, were you finished?

**Mrs Van Bommel:** No. I was going to say, so that if there is a situation where the lower tier is inconsistent with the upper tier, then this would still maintain the applicant's right to appeal a decision of the lower tier so that it is in conformity with that of the upper tier.

**Ms Churley:** Just to anybody who might be watching this, sometimes these things are not written in the plainest language possible. I wasn't sure if I understood the exception, because it sounds to me—let me use a specific example so I'll be clear. King City pipe, the big pipe: That would be an example of a lower tier making a decision against the big pipe and the upper tier coming in and overturning that and going ahead with the big pipe. So would this mean that if this is passed—it's not the same?

**Mrs Van Bommel:** I'm going to refer this to the technical staff, because they're having a conversation over here.

**Ms Churley:** That's what I want to know: Would it take away the right of a lower-tier municipality to make decisions, in that the upper tier could come in and override them and the lower tier would have no right to appeal?

**The Chair:** Mr Peterson, could you give clarification on this?

**Mr Peterson:** Certainly. The intent of (7.4) was, in the event that the lower tier did turn down a proposal and the proposal was in line with an upper-tier official plan—and the upper tier has responsibilities to set broad growth strategies and that sort of thing—this provision would allow an appeal to be possible.

**Ms Churley:** So, in fact, I've got it backwards, just so I'm clear. Because it's really hard if you read through (7.4). It's really difficult. I had to read it about 10 times to figure out which way it meant. So what you're saying is, the lower tier would have the opportunity to appeal?

**Mr Peterson:** No. Basically what it means is that in the event the lower tier turned down, for instance, a private application for an official plan amendment or that sort of thing, if the actual proposed amendment was in line with what the upper-tier official plan had, in terms of an approved designation or what have you for that area, there would still be the opportunity for the applicant to launch an appeal before the Ontario Municipal Board.

1030

**Ms Churley:** OK. So would my example of what happened with the big pipe fit into this amendment in any way?

**Mr Peterson:** To be honest, I'm not familiar with all aspects of the big pipe.

**Ms Churley:** OK.

**The Chair:** I don't think this would have anything to do with planning. It would be within the municipality.

**Ms Churley:** Perhaps you're right; Mr Chair has now entered the debate.

**The Chair:** Sorry. This is outside the Planning Act.

Any other comments or questions? Seeing none, those in favour of the government motion? Against? It is carried.

Next is a government motion: section 4(9) of the bill, subsection 22(11.1) of the act, on page 13.

**Mr Qadri:** I move that subsection 22(11.1) of the act, as set out in subsection 4(9) of the bill, be struck out and the following substituted:

"Matters of provincial interest

"(11.1) Where an appeal is made to the municipal board under this section, the minister, if he or she is of the opinion that a matter of provincial interest is, or is likely to be, adversely affected by the amendment or any part of the amendment in respect of which the appeal is made, may so advise the board in writing not later than 30 days before the day fixed by the board for the hearing of the appeal and the minister shall identify,

"(a) the provisions of the amendment or any part of the amendment by which the provincial interest is, or is likely to be, adversely affected; and

"(b) the general basis for the opinion that a matter of provincial interest is, or is likely to be, adversely affected."

**The Chair:** Can we get an explanation or the purpose of this amendment?

**Mrs Van Bommel:** This relates to official plan amendments. I think we discussed this earlier. It addresses concerns that were brought up at the hearings and addresses creating a more open and transparent process for the declaration of provincial interest.

**The Chair:** Questions or comments?

**Ms Churley:** Just briefly, Mr Chair, this is the same as a previous amendment. It deals with the same area, and I am in the same position where I have an amendment which I assume will be ruled out of order should this pass. Is that correct?

**The Chair:** That is right.

**Ms Churley:** OK. I will just say, as the last amendment is the same as this one, that for the same reasons I would ask that this be voted down and mine be supported. Although those amendments are similar, what the government amendment does is require the minister to explain in general how the matter is of provincial interest. My amendment is stronger in that it calls for specific details. Again, for the reasons I outlined earlier, the more information the public has and the more transparent the process is, the better.

**Mrs Munro:** I would just like to add that the only difference between this and the earlier amendment is that this one deals with amendments, and while this amendment does represent some response to the hearings, I don't believe it goes far enough in providing assurance to people on transparency, given the wording of "the general basis" and the idea that this may or may not happen. I will not be supporting this amendment.

**The Chair:** Any other questions or comments? Seeing none—

**Ms Churley:** A recorded vote, please.

## Ayes

Dhillon, Qadri, Rinaldi, Van Bommel.

## Nays

Churley, Munro.

**The Chair:** The motion is carried.

Page 13a, the NDP motion, is out of order.

We will proceed with the vote on section 4. Shall section 4, as amended, carry? Against? It is carried.

Section 5: Seeing that we haven't received any amendments, shall section 5 carry? Against? It is carried unanimously.

Section 6: page 14. It's an NDP motion, section 6(0.1), subsection 34(10.3).



**Ms Churley:** I move that section 6 of the bill be amended by adding the following subsection:

“(0.1) Subsection 34(10.3) of the act is repealed and the following substituted:

“Refusal and timing

“(10.3) Until the council has received any fee under section 69 and the prescribed information and material required under subsection (10.1), the information or material that the council considers it may need under subsection (10.2), the information and material required under the official plan or a bylaw of the municipality and any information that the municipality considers necessary to meet the requirements of the policy statements issued under section 3,

“(a) the council may refuse to accept or further consider the application for an amendment to the bylaw; and

“(b) the time period referred to in subsection (11) does not begin.”

**The Chair:** Can you explain?

**Ms Churley:** Yes. Again, this is the same as the earlier amendment—the same rationale applies. For municipalities to comprehensively assess applications, they need all of the information available. They have expressed concern that the current definition of “complete application” does not give them enough information to proceed in the best interests of their communities.

**The Chair:** Any other questions or comments?

**Mrs Van Bommel:** We won't be able to support this particular motion. As we said earlier, it is in some ways a repeat of another; this one relates to zoning bylaws. Again, there's uncertainty in what is required of applicants. There's no limit to what might be required. This does not allow for public scrutiny of what the municipality may decide is required, so that means it could vary from applicant to applicant.

**Ms Churley:** I would say, on the contrary, that the more information the municipality has, the more information the public has. I don't quite understand that argument at all. I don't want to continue on this debate—we had it earlier—but that didn't make any sense. The complaint we have is that developers often have information that they are not sharing with the municipality or the public, so it seems to me that the reverse would be true: that if that information were required, then the public and the municipality, which represents the public, would be able to make better judgments as to how to proceed.

**Mrs Van Bommel:** I just want to address that particular issue of public scrutiny. I think that municipalities should be able to identify in advance for the public what requirements they have of applicants. I think there needs to be some surety and some certainty around what is required, and the public needs to be able to know that in advance of a decision made by a municipality, as to what could be required of any one particular applicant.

**Ms Churley:** If I may, what you're saying is that you want to have spelled out specifically what kind of information a municipality should or could ask the developers to provide, as opposed to open-ended. What

concerns me about that, of course, is that cookie-cutter, one-size-fits-all. There may be circumstances where a municipality would have to vary, depending on the nature of the application. I think leaving it open-ended—actually, that's why we addressed it the way we did. Obviously, the amendment that I have is very clear, in terms of identifying the part or parts of the bylaw which a provincial interest—wait a minute. Am I looking at the right one here?

1040

**The Chair:** Page 14.

**Ms Churley:** At any rate, I don't need to go back over it again. But the way the amendment is stated, the municipality would have to stay within the bounds of the policy statements and all of the legitimate legislation and regulations under which they're working.

**Mrs Van Bommel:** That's not exactly what we're saying here, but I'm going to leave it to technical staff to address that one.

**The Chair:** Mr Peterson, can you give further explanation, or Mr Shachter?

**Mr Irvin Shachter:** Perhaps I can assist Mr Peterson. As Mr Peterson indicated before, all of the issues that have been raised here today are matters that are going to be addressed as part of the review that staff are undertaking as part of planning reform.

**Ms Churley:** OK.

**The Chair:** Any other questions? Seeing none, all those in favour of the amendment?

**Ms Churley:** Recorded, please.

**Ayes**

Churley.

**Nays**

Munro, Dhillon, Qaadri, Rinaldi, Van Bommel.

**The Chair:** It is defeated.

The next one is on page 15. It's a government motion, subsection 6(1.1).

**Mr Vic Dhillon (Brampton West-Mississauga):** I move that section 6 of the bill be amended by adding the following subsection:

“(1.1) Section 34 of the act, as amended by the Statutes of Ontario, 1993, chapter 26, section 53, 1994, chapter 23, section 21, 1996, chapter 4, section 20, 1999, chapter 12, schedule M, section 25, 2000, chapter 26, schedule K, section 5 and 2002, chapter 17, schedule B, section 10, is amended by adding the following subsection:

“Restriction

“(11.0.1) Despite subsection (11), a person or public body may not appeal to the municipal board in respect of all or any part of a requested amendment to a bylaw if the amendment or part of the amendment proposes to implement an alteration to all or any part of the boundary

of an area of settlement in a municipality or to implement a new area of settlement in a municipality.”

**The Chair:** Can we have some explanation of this?

**Mrs Van Bommel:** This is a technical change, and it's needed for clarity. This deals with the retroactive right of an applicant-driven zoning bylaw amendment for boundary expansion. I would refer to our technical staff to further explain that change.

**Mr Peterson:** The motion does two things. One, it separates this provision from the balance of the subsection. This supports a technical change, which will come later in the motions, to allow for a provision dealing with elimination of appeal rights regarding urban boundary expansions to apply retroactively. The second component of this changes the term that we were talking about—the term for urban settlement areas—to the term that was accepted.

**Ms Churley:** Can I just ask what amendment you're referring to? You said it's coming later? Did you say it's referring to—

**Mr Peterson:** It's really the amendment that's going to deal with the retroactivity of the provision that deals with application.

**Ms Churley:** Oh, I see. OK.

**The Chair:** Any other questions or comments? Seeing none, those in favour of the government motion on subsection 6(1.1)? Against? It is carried.

The next one is page 16, a government motion, subsection 6(2), subsection 34(11.0.1) of the act.

**Mr Rinaldi:** I move that subsection 34(11.0.1) of the act, as set out in subsection 6(2) of the bill, be struck out.

**The Chair:** And the rationale for that one?

**Mrs Van Bommel:** This is a housekeeping amendment.

**The Chair:** A housekeeping amendment only. Questions or comments?

**Ms Churley:** Well, if I could have clarification of that. I understand that this refers to zoning bylaws, does it not?

**Mrs Van Bommel:** I'll refer it to the technical staff.

**Mr Peterson:** That's correct. Basically, what this deals with—it's a complicated sort of thing. The previous motion actually put in the section again. This one takes it out. It's basically designed to separate what was a very long subsection into two parts. The previous motion kind of replicated the part that was in there, to insert it into the bill, and this takes the old section out. This just takes out the old section that needed to be removed.

**Ms Churley:** OK, I understand what you're saying. It wasn't quite clear to me.

**The Chair:** Thank you, Mr Peterson, for this clarification. Ms Churley?

**Ms Churley:** No, I think that's fine, thank you.

**The Chair:** Any other questions or comments? Seeing none, those in favour of the government motion, subsection 6(2), subsection 34(11.0.1) of the act? Against? It is carried.

The next one is page 17, a government motion, subsection 6(2), subsection 34(27) of the act.

**Mr Qaadri:** I move that subsection 34(27) of the act, as set out in subsection 6(2) of the bill, be struck out and the following substituted:

“Matters of provincial interest

“(27) Where an appeal is made to the Municipal Board under subsection (11) or (19), the minister, if he or she is of the opinion that a matter of provincial interest is, or is likely to be, adversely affected by the bylaw, may so advise the board in writing not later than 30 days before the day fixed by the board for the hearing of the appeal and the minister shall identify,

“(a) the part or parts of the bylaw by which the provincial interest is, or is likely to be, adversely affected; and

“(b) the general basis for the opinion that a matter of provincial interest is, or is likely to be, adversely affected.”

**The Chair:** Can we get clarification on this one?

**Mrs Van Bommel:** This is very similar to earlier motions. This one relates to appeals of zoning amendments and again establishes the authority to declare a provincial interest. Again, we are addressing concerns that were expressed at our hearings.

**Ms Churley:** I have a similar amendment. I take it that if this amendment is passed, mine will be ruled out of order.

**The Chair:** Yes.

**Ms Churley:** I would again say that although the government amendment goes some distance in terms of addressing the matter, it doesn't go far enough, and I hope this amendment will be voted down and my amendment not ruled out of order and actually passed, for the same reasons as previously mentioned.

1050

**The Chair:** Any other questions or comments? Seeing none, those in favour of the government motion? Against? It is carried.

The next one, page 17a, an NDP motion, is redundant. It's out of order, really, because the other one just passed.

Shall section 6, as amended, carry? Against? It is carried.

We'll now move on to a government motion: subsection 7(2) of the bill, subsection 36(3.1) of the act.

**Mr Dhillon:** I move that subsection 36(3.1) of the act, as set out in subsection 7(2) of the bill, be struck out and the following substituted:

“Matters of provincial interest

“(3.1) Where an appeal is made to the municipal board under subsection (3), the minister, if he or she is of the opinion that a matter of provincial interest is, or is likely to be, adversely affected by the bylaw, may so advise the board in writing not later than 30 days before the day fixed by the board for the hearing of the appeal and the minister shall identify,

“(a) the part or parts of the bylaw by which the provincial interest is, or is likely to be, adversely affected; and

“(b) the general basis for the opinion that a matter of provincial interest is, or is likely to be, adversely affected.”

**The Chair:** Some clarification, Mrs Van Bommel?



**Mrs Van Bommel:** Again, this is similar to the previous motion. In this case, it establishes the authority for the minister to declare a provincial interest on matters of zoning bylaw amendments for holding symbols. Again, we are addressing concerns about transparency that were expressed to us during the hearings.

**Mrs Munro:** Perhaps I could ask the technical staff, in terms of this part of the act where we're talking about a holding bylaw, is that something where someone who has owned land for any length of time—would that be the kind of circumstance where this holding bylaw would be in place? Is that who it covers?

**Mr Peterson:** More generally speaking, I think it would apply to cases where a municipality has identified that at some time in the future a land use would be appropriate for the area but there may not be services available or that sort of thing. Most of the time it's an indication that, yes, this is what we want to do in the future, but there are a number of issues and other matters that need to be overcome before the municipality would actually lift the "H" symbol, which would allow the proponent to do whatever the land may be designated for underneath the "H."

**Mrs Munro:** So by this, we're suggesting that the minister could decide that this represented a provincial interest? Is that what we're doing by this inclusion?

**Mr Peterson:** If there is a matter that's before the Ontario Municipal Board—I think you know there's a 30-day window and all the rest of that—the minister could declare a matter of provincial interest. That might relate to some issue related to servicing. Maybe there is a really big servicing issue associated with it or something to that effect.

**Ms Churley:** I just want to point out for the record that I have an amendment similar to this, but the wording is stronger. Should the government amendment pass, I assume that my amendment would be ruled out of order.

**The Chair:** That's right.

**Ms Churley:** OK. Thank you.

**The Chair:** Any other comments or questions? Seeing none, those in favour of the government amendment? Against? It is carried.

As I just mentioned, the next one, the NDP amendment on page 19, is out of order.

Shall section 7, as amended, carry? Against? It's carried.

We'll move on to page 20, an NDP amendment: section 8 of the bill, subsection 51(19) of the act.

**Ms Churley:** I move that section 8 of the bill be renumbered as subsection 8(2) and the following subsection added to it:

"8(1) Subsection 51(19) of the act is repealed and the following substituted:

"Refusal and timing

"(19) Until an approval authority has received any fee under section 69 or 69.1 and the information and material referred to in subsection (17), such other information and material that the approval authority considers it may need under section (18), as many copies of the draft plan of the

proposed subdivision as are required by the approval authority, the information and material required under the official plan or a bylaw of the municipality and any information that the approval authority considers necessary to meet the requirements of the policy statements issued under section 3,

"(a) the approval authority may refuse to accept or further consider an application; and

"(b) the time period referred to in subsection (34) does not begin."

**The Chair:** Can you explain the purpose of this amendment?

**Ms Churley:** Yes, I've explained the purpose. It's the same amendment that I made under other sections, which has been voted down. The government says they're dealing with this important matter under another process; therefore, I don't expect it to pass. I think that it should, that it would be good to deal with this very important matter during the course of these amendments, and I would urge the members here to do so.

**The Chair:** Questions or comments? Seeing none, those in favour of the NDP motion? Against? It is defeated.

Shall section 8 carry? Against? It is carried.

An NDP motion: section 9 of the bill, subsection 53(4) of the act, on page 21.

**Ms Churley:** I move that section 9 of the bill be renumbered as subsection (2) and the following subsection added to it:

"9(1) Subsection 53(4) of the act is repealed and the following substituted:

"Refusal and timing

"(19) Until the council or the minister has received any fee under section 69 or 69.1 and the information and material referred to in subsection (2), such other information and material that the council or minister considers it may need under subsection (3), the information and material required under the official plan or a bylaw of the municipality and any information that the council or minister considers necessary to meet the requirements of the policy statements issued under section 3,

"(a) the council or the minister may refuse to accept or further consider an application for a consent; and

"(b) the time period referred to in subsection (14) does not begin."

**The Chair:** Again, the rationale for this?

**Ms Churley:** It is the same rationale as the previous amendments.

**The Chair:** Questions or comments? Seeing none, those in favour of the NDP amendment? Against? It is defeated.

Shall section 9 carry? Against? It is carried.

An NDP motion: section 10 of the bill, clause 70.4(1)(a), page 21a.

1100

**Ms Churley:** I move that clause 70.4(1)(a) of the act, as set out in section 10 of the bill, be amended by adding "if the matters or proceedings are matters of provincial

interest or proceedings related to matters of provincial interest" at the end.

**The Chair:** Can you explain again?

**Ms Churley:** Yes. This relates back to my earlier motion involving section 2 of this bill to create a table that lists specific areas identified as matters of provincial interest, and how this schedule refers back to the green-belt hot spots, several developments I mentioned involving some areas that are before the OMB right now. So again, I would argue that by passing this amendment, the government creates an opportunity to intervene and protect those areas to fulfil the stated aim of the government to curb urban sprawl and protect natural heritage systems and water at the source. This is something that should have been done before. These hot spots that have been identified should not be proceeding, but they are, and they are in the hopper right now. What this clause does is sees to it that the amendment to the Planning Act allows for the minister to intervene, and that ministerial intervention can apply to these hearings involving some of the hot spots underway right now, like Castle Glen, Simcoe county and some of the others that I mentioned.

**Mrs Van Bommel:** This particular motion would mean that there would be no transition provisions for anything other than things that are related to or that have an expressed provincial interest. I think in the process of providing planning through this bill, we need to be able to provide transition for all processes or all applications that are in process. By accepting this particular motion, we create a great deal of uncertainty for applicants who have applications in process at this time. We need to be able to establish transition regulations, and that would not be possible under this motion unless they were of provincial interest.

**Ms Churley:** Just simply, I believe that all of those hot spots should be of provincial interest, and development should be stopped on those areas for the reasons I identified. This is an opportunity—perhaps the only opportunity—to stop the development on these lands.

**Mrs Munro:** I have a question. If I understand this amendment, would it mean that you were taking this as having more weight than the earlier parts of the bill, which talk about the minister having to declare a provincial interest 30 days before the OMB process? It's a technical question. I was just curious, when I read this amendment, if that would create a problem.

**Mr Shachter:** I don't think it's a matter of weight as much as causing uncertainty. As you recollect, section 2 of the act already contains a list of matters of provincial interest. What's proposed also is to include specific locations, if I can put it like that, and there will be some uncertainty with respect to which are the matters that are supposed to apply in any given circumstance. As well, I think it should be noted that, as motion 4 had not carried—and this relates back to motion 4—there may be a little bit of inconsistency caused, because the interests that are sought to be included are tied into that earlier motion and it may not fit in with the system of the act as it's presently contemplated.

**The Chair:** Any more questions or comments? Seeing none—

**Ms Churley:** A recorded vote, please.

**Ayes**

Churley.

**Nays.**

Dhillon, Munro, Qaadri, Rinaldi, Van Bommel.

**The Chair:** It is defeated.

The next one is page 22. It's a government motion, section 10, clause 70.4(1)(a).

**Mr Rinaldi:** I move that clause 70.4(1)(a) of the act, as set out in section 10 of the bill, be amended by striking out "before" and substituting "before or after."

**The Chair:** The rationale for this amendment?

**Mrs Van Bommel:** This allows the minister to deal with transitional regulations regarding things that occur before and after the bill comes into force. The occasion of its coming into force will be addressed in a further amendment. This again may have implications on approvals that are in process as well.

**Ms Churley:** Just for further clarification, maybe an example, I don't know, of a transitional matter—because we'll not have all the regulations in place by the time this act goes into effect. Are we referring here to legislation and policies still to be introduced, like the PPS or source water protection? I'm just not clear on what you mean by this.

**Mrs Van Bommel:** It is our intention to have the PPS also in place when royal assent comes for this bill.

**Ms Churley:** Why is the "after" in? You have "before or after." What are the implications?

**Mrs Van Bommel:** I'll have to go to the technical staff for this one.

**The Chair:** Can you clarify that, Mr Shachter?

**Mr Shachter:** Perhaps we can clarify. There are two things that adding the "or after" does. It deals with matters that are ongoing. One example that might come to mind is when there's been a subdivision application that has commenced before the act comes into force and draft plan approval has been received. One of the conditions of draft plan approval could be that a zoning bylaw amendment application would be required, and it might be conceivable that such an application would be commenced after. Without any transition regulation to address that, you would have a situation where the subdivision matter, which had received draft plan approval, would be dealt with under one Planning Act and the zoning application amendment would be dealt with under another. It was to ensure there was consistency in that type of a situation. That would be the example for that.

The other reason for the "or after" would be to also cover off issues relating to settlement area boundary expansion matters that are deemed to have come into force on, as you recollect, December 15, 2003, and to



deal with applications made after that particular date. It addresses those two areas.

**The Chair:** Any other questions or comments? Seeing none, all those in favour of the government motion on section 10, clause 70.4(1)(a)? Against? Seeing none, it is carried.

The next one is a government motion, page 23, on section 10, clause 70.4(1)(b).

**Mr Qaadri:** I move that clause 70.4(1)(b) of the act, as set out in section 10 of the bill, be amended by striking out “urban settlement area” and substituting “area of settlement.”

**The Chair:** Again, an explanation?

**Mrs Van Bommel:** This is again a housekeeping matter. We are trying to establish conformity with what we’ve already agreed to in the amendment in section 1.

1110

**The Chair:** Questions or comments? Seeing none, all those in favour of the government motion on section 10, clause 70.4(1)(b)? Against? It is carried.

The next one is page 24, an NDP motion on section 10, subsection 70.4(2). It is out of order because the schedule is not part of the bill. The amendment on page 4 was defeated. We just want to clarify this. Yes, 4 and 4a. If you look at page 4a, you refer to parts (a) and (b), and that was defeated. So we’re declaring this one out of order. Sorry, Ms Churley.

The next one is page 24a, an NDP motion on section 10, subsection 70.4(2.1).

**Ms Churley:** This one is in order, I take it.

**The Chair:** There is no schedule in there.

**Ms Churley:** I move that section 70.4 of the act, as set out in section 10 of the bill, be amended by adding the following subsection:

“Notice

“(2.1) The minister shall, within 30 days after the day the Strong Communities (Planning Amendment) Act, 2003 receives royal assent, publish notice in the Ontario Gazette of the matters and proceedings that will be dealt with or affected by a regulation made under this section.”

**The Chair:** And the purpose of this amendment?

**Ms Churley:** It’s all about transparency and fairness. It sets out timelines so all parties involved know as soon as possible. You will recall that this is an issue that was raised during the hearings. What it means is the minister may make regulations on transitional matters, including which applications already in progress will be dealt with under the old rules and which will be subject to the new rules. The minister should put these provisions in the act. Doing otherwise leads to uncertainty and perceptions of unfairness. At the very least, the regulation should be made public soon so developers, municipalities and communities know where they stand. This provision, like the section of the bill giving cabinet the final say on planning matters, appears to give cabinet more power than is appropriate.

I addressed this at the hearings as well, as did some of the deputants. There is real concern about the regulations

and the need to include this in the bill, even if it’s just for perception, during the transitional period.

**Mrs Van Bommel:** I’m afraid we’re not going to be able to support this motion. We feel that regulations are already required to be published in the Ontario Gazette. That is under the Planning Act now, and that would be occurring. For any proposed transition, regulations would also be posted on the Environmental Bill of Rights registry. That would be for a minimum of 30 days, so there is opportunity for the public to see them there and comment on them through that environment.

Requiring the minister to make transitional regulations within 30 days puts a very tight timeline on this. As a government, we intend to move very quickly to ensure that there is certainty for all, so we don’t feel that putting a 30-day timeline on it is necessary.

**The Chair:** Any other comments or questions? Seeing none—

**Ms Churley:** Could I have a recorded vote?

**Ayes**

Churley, Munro.

**Nays**

Dhillon, Qaadri, Rinaldi, Van Bommel.

**The Chair:** The amendment is defeated. The next one is a government motion on page 25: section 10, subsection 70.4(3).

**Mr Qaadri:** I move that subsection 70.4(3) of the act be struck out and the following substituted:

“Retroactive

“(3) A regulation under this section may be retroactive to December 15, 2003.”

**The Chair:** The rationale behind this amendment, Mrs Van Bommel?

**Mrs Van Bommel:** This would establish the date of April 15 for the regulation under this section that may be retroactive. Commencement of the date of the act is changed to the date of royal assent, with some exceptions. But otherwise, we want to ensure that regulations will apply to specific matters.

**Ms Churley:** As I understand it, this is something I can support, although, again, I think our measure is stronger—the urgency of some of the things I wanted to lay out in the schedule. But if this is made retroactive, then, does that mean that some of the issues that I’ve listed under the schedule, that I’d like to add to the schedule, could be dealt with under this amendment, like, say, Castle Glen?

**Mrs Van Bommel:** I’m going to refer to technical staff for that.

**Mr Shachter:** Without wishing to comment on specific matters, there may be other reasons why Castle Glen could not be addressed. The purpose behind this specific motion is to change the words “came into force” so that regulation actually is tied to a specific date. You

will see in an upcoming motion that there are a number of different time periods from which portions of the act will become effective. It's to clarify that the urban settlement boundary matters and the transition regulations generally will be able to speak back to the date of first reading of this bill.

**Mrs Munro:** I just want to clarify, because I think when you read the motion into the record, you said "April."

**Mr Qaadri:** You're correct.

**Mrs Munro:** OK, that's what I just wanted to clarify, because I was reading "December," and I thought—that's OK.

**The Chair:** Do you want to correct that?

**Mrs Van Bommel:** I certainly do want to correct that. Thank you, Chair, and thank you, Mrs Munro, for pointing that out.

**Ms Churley:** Could I ask a question, just because I'm unclear, about the next amendment on the schedule? Is that going to be in order? It's going to be ruled out of order, isn't it?

**The Chair:** Well, when we get to that one—

**Ms Churley:** Yes, it's next.

**The Chair:** We'll finish this one, then, first.

**Ms Churley:** Well, yes, but I'd like to know, because in some ways it applies to this one.

**The Chair:** For clarification, yes, it's going to be redundant, because the motion on page 4 was defeated.

**Ms Churley:** Just speaking to the amendment before us, then, the measures that I tried to put into place laid out the matters, the really urgent situations that I wanted to have in the schedule, which has now been ruled out of order—the following amendment. But it's one that I spoke of earlier, and I want to say how important it is. The reason I asked the question about this particular amendment—and it's unclear what kind of impact it will have, but one of the things I want it to do would be to include in the schedule, so it can be dealt with retroactively: Castle Glen, Pickering Duffins Rouge agricultural preserve; Simcoe county; Dufferin Aggregates; Rockford quarry; King City; North Leslie, Richmond Hill; areas of significant scientific and natural interest, including Oakville Trafalgar moraine and Boyd Park-Pine Valley; Seaton; and then such other matters as may be prescribed.

1120

I'm hoping the amendment that's before us—it doesn't sound likely—might be a way to go back retroactively and look at some of those.

For instance, I brought up Castle Glen Development. As people here are aware, it's a corporation proposing to locate a year-round community on the escarpment, and that would be the largest development on the escarpment since 1975. I think that is quite significant and needs to be dealt with retroactively.

The Pickering-Duffins Rouge agricultural preserve: The Pickering town council is about to add to its official plan a growth management plan that calls for the Duffins

Rouge agricultural preserve to be opened to urban development.

Simcoe county: a leapfrog development. We've been told time and time again that, because of the areas of the greenbelt, it's going to take place because of what's happening in Simcoe county. What the developers are doing is leaping right over and building there, which will create more urban sprawl, more highways and problems that go along with that.

Dufferin Aggregates: That's a hole in the UNESCO biosphere. The site contains many provincially significant wetlands, the headwaters of Sixteen Mile Creek as well as the nationally threatened Jefferson salamander.

The Rockford quarry—I mentioned all of those; North Leslie, Richmond Hill: A massive new subdivision is proposed on the headwaters feeding the main branch of the Rouge River. This is one of the most environmentally sensitive and threatened areas in southern Ontario. Developers are proposing 6,000 residential units as well as industrial and commercial buildings like big-box stores to be built on, and adjacent to, provincially significant wetlands and headwaters. And the site is located a stone's throw from the controversial plan to build 5,700 new houses on the Oak Ridges moraine.

Areas of significant scientific and natural interest, including Oakville Trafalgar moraine and Boyd Park-Pine Valley: There's an approval for a plan to put 55,000 new residents and 35,000 employees on the moraine. That's heading to the OMB likely this fall. At 7,600 acres, this environmentally sensitive area is the last undeveloped rural land in Oakville. The Trafalgar moraine contains many significant provincial wetlands and is an important habitat for birds and other species. It's in a watershed area, the source of Oakville's six major creeks, and it contains several candidate sites for designation as an area of natural scientific interest. The area is already a regional area of natural scientific interest.

I want to point out, and I'm still hoping, as we speak to the Liberal amendment before us, that since my amendment is going to be ruled out of order because it's been voted down before, perhaps somehow this amendment could be made to deal with these very significant environmentally sensitive lands. That's why I wanted to put them in the schedule. The evidence and the proof are there. For instance, the Liberals' very own Mike Colle, when in opposition, presented a private member's bill in May 2002 to protect the Oakville Trafalgar moraine from these very same development pressures. When Mr Colle presented the bill, he commented then, about the previous government, that "the province needed to call a time-out to make sure any development is compatible with Justice O'Connor's Walkerton report, which"—as you will remember—"calls for provincial protection of watershed areas like the Trafalgar moraine, and is also compatible with the province's own self-proclaimed anti-sprawl smart growth policies." That's what Mr Colle said then, in opposition.

Another thing that Mr Colle said in opposition was, "If the province is serious about its new smart growth



principles, let them prove it in Oakville.... The fate of this moraine is too important to be decided at the OMB,' said Colle. 'The province must step in.'"

Then there's Seaton.

I'm mentioning all of those now because I want to be very clear about why I included them in the schedule and why they were voted down. If there is any way within the existing amendment—and I understand from staff that it's complicated and it would involve looking at all of the rules around those applications. But if you look at it—and some of you sat on the greenbelt committee—you will know that all the evidence is there—and the Liberals, in opposition, knew the evidence was there—to stop many of those developments. We have a situation now where they're mostly going before the OMB. A lot of these developments are probably going to proceed, and it goes against the grain of what the Liberal government is saying in terms of wanting to stop urban sprawl and protect our groundwater source protection and all of those things.

I just thought it was really important to get on the record why indeed I put those specific 10 hot spots in here and tried to get them on the schedule. I will be looking to see if there's anything within this amendment—which we're about to pass, I assume—that can in any way go back and deal with at least some of those hot spots before us so they won't end up being developed.

**Mr Jerry J. Ouellette (Oshawa):** This relates to this amendment: I'm wondering if we have any number of those that will be affected by retroactivity, predominantly as relates to amendment 12 whereby the upper-tier municipalities will gain greater control over the lower-tier municipalities. The second part is, is there any notification going out to those that will be affected by the retroactivity of this?

**Mr Peterson:** I don't have any information before me right now identifying how many files might be caught by one particular provision or another. In terms of notification of the retroactivity provisions, I think the issue is that it's an open process through the legislative process. I think that would likely be the way there would be notification. As well, you have to remember that any regulation we have needs to be posted on the Environmental Bill of Rights as well. So that would be the type of notification.

**The Chair:** Any other questions or comments? Seeing none, all those in favour of the government motion, section 10, subsection 70.4(3) of the act? Against? It is carried.

Shall section 10, as amended, carry? Against? It is carried.

Section 11, page 27: It's a PC motion.

**Mrs Munro:** I move that section 11 of the bill be struck out and the following substituted:

"Commencement

"11. This act comes into force on a day to be named by proclamation of the Lieutenant Governor."

This is simply to follow what is normal procedure. We certainly heard from people in the hearings of the

uncertainty that retroactivity brings with it, and I think this is to provide the community, the decision-makers, some certainty.

**Ms Churley:** As I understand this, what this amendment would do would be to eliminate the retroactivity of this bill, so it would only come into effect on the day of proclamation. So all of the retroactivity within this bill would be wiped out and nothing would be deemed to come into effect until it's proclaimed.

**The Chair:** Is that the rationale for this motion, Ms Munro?

**Mrs Munro:** It does say, "This act."

1130

**Mrs Van Bommel:** We're not going to be supporting this motion because we do need some retroactivity as part of our bill. It's certainly not going to apply to everything, but it is important that there be retroactivity possibilities within the bill so the minister can establish transition regulations. It is not the intent of this government to have the retroactivity apply to certain processes and applications that have been in the queue or have been in process since—I'll avoid the word "April"—December 15. So not all those would be captured, but we do need some retroactivity within this bill.

**Ms Churley:** I'm not supporting this amendment either, although I do want to say that although I think retroactivity is important in this bill, I am concerned that some of my amendments that would strengthen the public participation and transparency have been voted down, and I think there is real, valid concern, as there always is with any situation where there's retroactivity. So the more transparent and open the process is, in terms of how the regulations are going to be done, is really important.

The intent of a previous amendment of mine that dealt with that was voted down, and I believe the parliamentary assistant said at the time that 30 days was too short a time to come up with the amendments. But that was, in fact, not the purpose of the amendment; the purpose of the 30 days was to outline just how the government was going to go about the processes and things, and that was voted down.

So although I can't support this amendment, I do want to say that I'm concerned about the process and how this is going to happen. I understand why there is concern in the community about retroactivity without some of those safeguards being put in place.

**The Chair:** Any other comments? Seeing none, all those in favour of the PC motion on section 11? Against? It is defeated.

Page 28, a government motion on section 11: Mr Dhillon.

**Mr Dhillon:** Section 11 of the bill: I move that section 11 of the bill be struck out and the following substituted:

"Commencement

"11(1) Subject to subsections (2) and (3), this act comes into force on the day it receives royal assent.

"Same

“(2) Section 2 comes into force on a day to be named by proclamation of the Lieutenant Governor.

“Same

“(3) Section 1, subsections 4(1), (2), (3), (4), (7), (8) and (10), subsection 6(1.1) and section 10 shall be deemed to have come into force on December 15, 2003.”

**The Chair:** Can we have further explanation on the purpose of this amendment?

**Mrs Van Bommel:** It certainly does get complicated when you start looking at all the sections and subsections that are listed here.

The intent here is to set a date or a time for the establishment of the bill and its processes. The first part has implications on the new decision timelines that we are establishing within the bill. They would not be impacted by the retroactivity, with the exception of those for public meetings on official plan amendments. The second part of this pertains to the PPS. Again, the “shall be consistent with” would not be retroactive; it would come together with the establishment of the PPS. The third part of this applies to settlement area expansion and timelines for the holding of public meetings, and would certainly be part of the retroactivity.

**The Chair:** Any questions or comments? Seeing none, all those in favour of the government motion on section 11? Against? It is carried.

Now, shall section 11, as amended, carry? In favour? Against? It is carried.

Moving on to section 12, shall section 12 carry? Against? It is carried.

Shall the title of the bill carry? In favour? Against? It is carried.

Shall Bill 26, as amended, carry? In favour? Against? It is carried.

Shall I report the bill, as amended, to the House? In favour? Against? It is carried.

I have to say thank you very much for your participation, your co-operation. This afternoon's meeting has been cancelled, and the committee stands—

*Interjection.*

**The Chair:** Ms Churley?

**Ms Churley:** I don't think I've ever moved through a committee clause-by-clause so quickly. I don't know if it's deliberate, but it's freezing in here. So I kept my comments particularly short because my teeth are practically chattering.

**The Chair:** I fully agree with you on this. It's very cold.

**Ms Churley:** So you got off easy this time, but I hope this doesn't become government policy to keep the committee rooms really cold to get us out of here in a hurry.

**The Chair:** The committee stands adjourned until the call of the Chair.

*The committee adjourned at 1136.*









## CONTENTS

Wednesday 29 September 2004

<b>Strong Communities (Planning Amendment) Act, 2003, Bill 26, <i>Mr Gerretsen /</i></b> <b>Loi de 2003 sur le renforcement des collectivités (modification de la Loi</b> <b>sur l'aménagement du territoire), projet de loi 26, <i>M. Gerretsen</i> .....</b>	<b>G-517</b>
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## **Legislative Assembly of Ontario**

First Session, 38<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Première session, 38<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

Wednesday 1 December 2004

# **Journal des débats (Hansard)**

Mercredi 1<sup>er</sup> décembre 2004

## **Standing committee on general government**

Liquor Licence  
Amendment Act, 2004

## **Comité permanent des affaires gouvernementales**

Loi de 2004 modifiant la loi  
sur les permis d'alcool

Chair: Jean-Marc Lalonde  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 1 December 2004

Mercredi 1<sup>er</sup> décembre 2004*The committee met at 1537 in room 151.*

**The Chair (Mr Jean-Marc Lalonde):** I would call this meeting to order. First of all, good afternoon and welcome to our first day of a two-day public hearing on Bill 96, An Act to amend the Liquor Licence Act.

## SUBCOMMITTEE REPORT

**The Chair:** The first item on the agenda is the subcommittee report. I would ask Mr Rinaldi for his report.

**Mr Lou Rinaldi (Northumberland):** Mr Chair, your subcommittee met on Monday, November 22, 2004, to consider the method of proceeding with Bill 96, An Act to amend the Liquor Licence Act, 2004, and recommended the following:

(1) That the committee meet at Queen's Park from 3:30 to 6 pm on Wednesday, December 1, and Monday, December 6, 2004, for the purpose of public hearings on Bill 96.

(2) That the committee invite the Minister of Consumer and Business Services to make a 20-minute presentation before the committee on Wednesday, December 1, 2004; that opening statements by each opposition party be scheduled for up to five minutes per party; and that ministry staff be scheduled to provide the committee with a 10-minute technical briefing.

(3) That the committee meet for the purpose of clause-by-clause consideration of Bill 96 on Wednesday, December 8, 2004.

(4) That amendments to Bill 96 be received by the clerk of the committee by 4 pm on Tuesday, December 7, 2004.

(5) That an advertisement be placed in all English-language daily newspapers, the French-language daily newspaper and the Durham region weekly, This Week, as well as on the ONT PARL channel, the Legislative Assembly Web site; and further, that public notice be provided via the Canada NewsWire Service.

(6) That the deadline for those who wish to make an oral presentation on Bill 96 be 5 pm on Monday, November 29, 2004.

(7) That the clerk provide each caucus with a list of those who have responded to the advertising by 10 am on Tuesday, November 30, 2004.

(8) That the clerk be authorized to schedule groups and individuals in consultation with the Chair; and

further, that if there are more witnesses wishing to appear than the time available, the clerk consult with the Chair who will make decisions regarding scheduling.

(9) That the deadline for receipt of written submissions be 5 pm on Monday, December 6, 2004.

(10) That individuals be offered 10 minutes in which to make their presentations and organizations be offered 15 minutes in which to make their presentations.

(11) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

That's your report, Mr Chair.

**The Chair:** Thank you, Mr Rinaldi. I presume that you will move the adoption of the report.

**Mr Rinaldi:** I will so move.

**The Chair:** As stated, this hearing will take place for two days, today and December 6, from 3:30 till 6 o'clock and clause-by-clause will be on December 8.

We have had 17 individuals or groups who have applied to make a presentation. The presentation can be made in the language of their choice since we have the instant translation in place.

LIQUOR LICENCE  
AMENDMENT ACT, 2004LOI DE 2004 MODIFIANT LA LOI  
SUR LES PERMIS D'ALCOOL

Consideration of Bill 96, An Act to amend the Liquor Licence Act / Projet de loi 96, Loi modifiant la Loi sur les permis d'alcool.

**The Chair:** We'll move immediately to our guest, the Minister of Consumer and Business Services, the Honourable Jim Watson. You can proceed.

STATEMENT BY THE MINISTER  
AND RESPONSES

**Hon Jim Watson (Minister of Consumer and Business Services):** Thank you, Mr Chairman. Merci beaucoup, monsieur le président. C'est ma première fois ici en comité. It's my first time appearing before a committee and I look forward to the opportunity to dialogue with you.



It's my pleasure to be here with a number of colleagues from the Ministry of Consumer and Business Services. I want to thank them. They'll be more formally introduced a little later for the great work that they continue to do in my ministry.

I'm pleased to be able to speak today in favour of Bill 96, the Liquor Licence Amendment Act, 2004. The purpose of this legislation is to balance consumer choice and liquor service with stronger enforcement measures to increase public safety. The Liquor Licence Act, as you may know, sets out rules for the sale and service of beverage alcohol in the province of Ontario.

Over the years, the act has become increasingly outdated. It is out of step with the ever-evolving, changing market. By modernizing the Liquor Licence Act, we are taking the first steps toward bringing Ontario's liquor laws into the 21st century. We're proposing changes that will make our communities safer, more vibrant and more prosperous.

Let me remind you again of what this legislation entails. The first component would lay the groundwork for bring your own wine, also known as BYOW. BYOW has been a huge success for over 18 years in the province of Quebec and is now in place and available to restaurateurs and customers in dozens of locations, including Alberta, New Brunswick, Australia, Oregon, New York, France, Italy, New Jersey, New Zealand, just to name a few.

Since this initiative was first announced, correspondence to my office is over 80% in support of this consumer choice. Groups like the Association of Municipalities of Ontario and hotel associations in Toronto and Ottawa have all endorsed it, as has the mayor of Toronto and various tourism leaders throughout Ontario, including one of the great tourism destinations, Tourism Niagara.

I and my office have met with a number of social responsibility groups, public safety organizations, industry associations and individual restaurateurs and I've personally met with over 30 different individuals to talk about Bill 96.

Some restaurateurs don't support the idea. To them, I say "no problem." This is very much a permissive piece of legislation. If you don't want to offer it to your customers, you don't have to.

Many restaurants I've spoken to indicate they wish to offer the service on a particularly slow night, perhaps Mondays, as a way of attracting customers to a traditional slow night in the restaurant business. That is perfectly permitted under this legislation.

Others want to strike arrangements with wineries in southwestern Ontario, such as the Pelee region area, and the Niagara region, where a customer could perhaps go on a wine tour of one for the great wineries in Ontario and then, through a partnership and marketing opportunity with a restaurant, purchase a bottle of wine at one of those wineries and then bring the wine to one of the restaurants they have advertised as being a BYOW restaurant.

This bill proposes a definition of the term "supply" to make it clear that the term does not only refer to cases where a patron purchased liquor from a licensee; if passed, the term "supply" would also include situations where patrons bring wine into a licensed premises. This definition would apply wherever the term "supply" is used in the act. As a result, it would be an offence for a licensee to supply wine to a minor or to a person who is intoxicated even when the patron brings wine into the restaurant.

While the change itself appears relatively minor, it would lay the important social responsibility groundwork for future changes, including bring your own wine or BYOW. It also means that the same liability that licensees face today would be in place if they opt for BYOW if Bill 96 were to pass.

According to the Alberta Restaurant and Food Services Association, the industry-led organization representing over 8,000 of Alberta's restaurants, they have received no reports of decreased business or negative effects on wait staff, given the implementation of BYOW last year. Additionally, this Alberta restaurant association has discovered no negative impact on liability for their membership. These are the same findings of every single jurisdiction in the world that has adopted BYOW—absolutely no evidence of a negative impact on a licence from a liability point of view.

If Bill 96 is passed, the government will proceed with regulatory changes to introduce bring your own wine to Ontario. This service, as I indicated, would allow patrons to bring bottled wine into a licensed restaurant and consume it there. Although not part of this bill, the government also hopes to bring another consumer choice to Ontario: the option of take home the rest. This initiative would allow patrons to remove an unfinished bottle of wine from licensed establishments as long as the licensee had properly resealed the bottle.

This option would mean a certain coming of age for Ontario. It would be civilized to bring a bottle of your favourite vintage to your favourite licensed restaurant. It would also be civilized to have a courteous server open your bottle and pour your wine. It would be civilized to be able to take home what you don't drink, instead of having to face the dilemma that many people face of having to empty the bottle to the last drop. If customers were able to bring their own wine and take home what they didn't drink, they might be more inclined to dine out in the first place, increasing restaurant revenue. Moreover, they wouldn't feel compelled to finish the whole bottle on site, encouraging responsible drinking.

Bring your own wine and take home the rest are based on the same principle, that being choice. Participation in either option would be entirely voluntary on the part of licensed establishments. No business would be forced to offer this option. If a restaurant doesn't want to offer this service to customers, it simply wouldn't.

If passed, this bill would maintain current responsibility requirements if these options come into effect. Careful safeguards would be put in place for these initiatives to ensure safe communities.



The legislation addresses the issue of responsibility. Licensees would still be responsible for making certain that liquor is not supplied to an intoxicated person or to someone under the age of 19, whether that person purchased the wine from a licensee or brought the wine with them to the restaurant. As we all know, modernization of our liquor laws is about more than choice; it's about balancing the choice with stronger enforcement.

The fact is, since the Liquor Licence Act has had no significant amendments in 14 years, enforcement tools in this sector have fallen behind. Consider gaming, for instance, which is also overseen by the Alcohol and Gaming Commission. Under the Gaming Control Act, the registrar of alcohol and gaming has the power to immediately suspend an operation when it is in the public interest to do so. Comparable powers, in my view, are needed on the alcohol side of the commission's mandate to keep our communities safe.

That is why we're proposing an amendment to allow the registrar to immediately suspend a liquor licence, if necessary, in the public interest; that is, where there is danger to public safety. Currently, under the act, two board members can order an interim suspension of a liquor licence, if necessary, in the public interest. If an interim suspension is ordered, a full hearing by the board must take place within 15 days. The problem with the current system is, the procedure has a built-in delay, as two board members, many of whom live outside the city of Toronto, must be reached before anything can be done. In the meantime, dangerous or disruptive situations may continue and may cause stress and grief to surrounding neighbourhoods and communities.

This government shares all of our concerns about violence. The amendment we propose would enable the registrar of the AGCO to immediately suspend a liquor licence, if necessary, in the public interest, as in situations where public safety is threatened. It would enable the commission to respond quickly to dangerous situations as they come up, and to ensure fairness for the individual licensee. An immediate suspension by the registrar would be followed within 15 days by a full hearing to review the suspension. In other words, the process could not go on and on. It would have to be done within 15 days. This reform would be a step toward equipping the AGCO with the modern tools it needs to enforce the liquor laws effectively and protect the public.

But we need to do more to deal with dangerous and disruptive situations at licensed establishments. Police currently have the power to clear premises where the act or regulations have been contravened or public safety is at risk. However, the law does not make it an offence for people to fail to leave the premises or for them to return later after being asked to leave. This loophole can undermine police efforts to vacate premises where disruptive and dangerous behaviour is taking place. We intend to fix this problem by making it an offence to fail to leave the premises, if ordered to do so by a police officer, or to return the same day. If people don't obey, charges could be laid. The Toronto Police Service has asked for this

change as far back as 1997, and with your concurrence we intend to deliver.

I want to thank the Police Association of Ontario for their valuable input and support of these measures as well as the BYOW. You will be hearing from this organization during these hearings.

#### 1550

Finally, the issue of underage drinking is of primary importance. The act contains a number of offences pertaining to liquor and underage persons. For instance, it prohibits the sale or supply of liquor to anyone under 19, knowingly permitting a person under 19 to have or consume liquor on licensed premises and knowingly permitting a person under 19 to use a brew-on-premise facility to make beer or wine. The act provides for maximum and minimum fines for violation of these provisions.

In 1997, the maximum fines were increased, but the minimum fine of \$500 for a licensee and \$100 for a non-licensee remained the same. The courts have tended to levy fines at the lower end of the range, so this change had little impact. We propose to double the minimum fines for these offences to \$1,000 for a licensee and \$200 for a non-licensee. The aim, to be perfectly blunt, is deterrence. We want to make it expensive to commit these violations, and we want to reinforce our standards of social responsibility where beverage alcohol is concerned.

In modernizing the liquor licence system, our government is trying to strike a balance. We're determined to improve consumer choice and customer service on one hand, and we're committed to providing stronger and more effective enforcement tools on the other. This, in my opinion, is a progressive, forward-looking measure that would help bring Ontario's liquor laws into the 21st century.

When I had the honour and privilege of serving as president and CEO of the Canadian Tourism Commission, I saw first-hand some of the challenges and opportunities facing the tourism industry in this province and throughout Canada. The challenges have compounded in recent months with the SARS outbreak, heightened security concerns at our borders, and the rising Canadian dollar. But I remain firmly convinced that if you want to build your business, you simply can't go wrong by offering consumers more choices. Today's marketplace is based on choice. We want to give businesses new opportunities to serve their customers and make our quality of life that much better.

The majority of restaurateurs who support this bill and have contacted me are the entrepreneurs who in many instances have previously experienced BYOW, in New York or perhaps in Europe. They've seen it work in those jurisdictions, and they want to be a part of this exciting new option and offer this new option to their customers. At the same time, we want to protect the public from the harm that the misuse of liquor can cause. This is an issue that has brought on lively debate. But when a new issue appears on the scene, a certain amount



of misinformation can easily slip into that debate. In closing, I'd like to take a few moments to dispel a series of myths that continue to crop up.

One myth is that these changes would just loosen the controls that prevent excessive drinking. As I mentioned earlier, responsible liquor service remains a top priority. I would not be interested in sponsoring a piece of legislation that is going to add to drinking and driving in our province. Several years ago, I was nearly killed by a drunk driver, so I have personal experience of the terrible situations that occur when people are drinking and driving. But I don't believe this piece of legislation would go down that road.

In this regard, the dining environment would not change. The licensee would continue to be accountable to comply with the liquor laws, even if patrons bring their own wine. It would be up to the licensee to ensure that overconsumption or consumption by minors does not happen, and special features of the BYOW initiative would support responsible conduct.

Each bottle would have to be opened by the licensee or by a server, who would keep track of how much is being consumed, and only unopened, commercially-made wine would qualify. In other words, you could not bring homemade wine to a restaurant. The reason for that is that the restaurateur or the licensee would not know the alcohol content of homemade wine. The point to stress is that licensed restaurants would remain responsible for keeping people from consuming too much. They would remain accountable to responsible service, just as they are responsible now.

Another myth is that allowing customers to have open wine bottles in the car would just encourage more people to drink and drive. The fact is, establishments offering the take-home-the-rest option would be required to reseal the bottle in such a way that it could not be readily reopened and consumed while in transit.

Some people have asked, "How do you do this?" For about \$15 to \$20, you can purchase a recorking machine at a brew-your-own operation. It's quite easily available and very inexpensive. What that would do is allow the licensee to put the cork back in, flush with the bottle, so you couldn't pry it open with your fingers. Some say that resealing the bottle won't stop patrons from drinking on the street or behind the wheel. In reality, existing controls on transporting open liquor and the ban on consuming it in public areas would, of course, still apply.

For example, it's the law that open bottles of liquor must not be readily accessible to people in a vehicle. So a take-home-the-rest bottle would likely have to be carried in the trunk. It would be the same if you were bringing an open bottle home from a party at a friend's home. You would have to transport it in a way that makes it hard to get at.

Another refrain is that this package doesn't go far enough; there is more to be done with the Liquor Licence Act. I completely agree with that. The process of modernizing the regulatory system for beverage alcohol can't be completed overnight. The bill before us today

represents the first stage of the reform. Our government is committed to further stages of Liquor Licence Act reform in consultation with stakeholders and the public.

In the new year, I'm going to be working with my parliamentary assistant, Mr McMeekin, to hold a series of round tables across the province to seek input from communities that are affected by rowdy establishments, to licensees who feel that the process is too long, drawn-out and bureaucratic, to police organizations, to municipal leaders. I very much look forward to receiving that kind of input on how we can improve and modernize the rest of the Liquor Licence Act.

This first stage is the foundation on which we must build, and we're confident that the outcome of this stage will be a change that will make our economy stronger from the hospitality and tourism industry, the public safer and our communities more dynamic and prosperous. This legislation, in my opinion, will help make all this possible.

I thank members of the committee for hearing my remarks. I look forward to hearing from my opposition colleagues. I know you will receive a technical briefing very shortly, as well as depositions from individuals.

**The Chair:** Thank you, Mr Minister. You can stay with us until we hear the statements from our opposition party members. Each party has five minutes to come up with a statement. Mr Martiniuk or Mr Yakabuski, do you have any comments or statements?

**Mr Gerry Martiniuk (Cambridge):** Are we permitted to ask questions of the minister?

**Hon Mr Watson:** Sure.

**Mr Martiniuk:** It's probably technical. I could ask the technical person, but I'm sure you'd have the answer.

**The Chair:** If the minister is willing to answer the question—

**Hon Mr Watson:** Certainly, and if I don't have the answer, I'll refer it to our staff.

**Mr Martiniuk:** Just a point of clarification: It's not clear to me whether or not, if you purchase wine at a licensed establishment, you can take that wine home after being resealed.

**Hon Mr Watson:** Yes, you can.

**Mr Martiniuk:** The regulations will provide for that?

**Hon Mr Watson:** That's correct.

**The Chair:** Any more questions from the opposition?

**Mr John Yakabuski (Renfrew-Nipissing-Pembroke):** I have no questions.

**The Chair:** You will have some later.

**Mr Yakabuski:** OK.

**The Chair:** You still have five minutes, though.

**Mr Yakabuski:** Do we have some speaking time too?

**The Chair:** Yes. Each party has five minutes.

**Mr Michael Prue (Beaches-East York):** I couldn't imagine you giving up your five minutes.

**Mr Yakabuski:** Yes. When he said "questions"—  
*Interjection.*

**Mr Yakabuski:** I would never want to be out of order; you know that.



I don't think many of us have a great deal of serious problems with this bill, other than some concerns about the consultation process that may or may not have taken place with some people; I know Minister Watson has talked about some of that.

In general, I think they have struck a pretty good balance. Number one, making sure there's not an encouragement to have alcohol become a greater problem than it is in some cases—that's certainly incumbent on all of us as legislators. Presenters may feel differently, and we're certainly interested in listening to what they have to say.

I have looked at some of the details, and we have talked about it with different people. In general, the bill is probably not necessary, because it's not going to change a great deal of things. I don't think there will be a lot of establishments taking advantage of it or people served by it, because I think establishments, given the choice, if they do allow people to bring their own wine, I suspect the corkage fees will remove any of the financial benefits to the consumer.

1600

However, it is an issue of choice, and by giving that choice, we'd leave it in the hands of responsible people. I'm not concerned about it encouraging drinking and driving because, quite frankly, I'm more concerned about a person who goes into a restaurant and pays the price of a bottle of wine and feels, "I've paid for that. I'm intending to make sure I get my money's worth." I would be more concerned about that as a problem, and I think that sometimes is a problem. So from that point of view I don't see this as exacerbating that problem. In fact, the option that someone can actually take it home might not be a bad thing at all because if it's not consumed, it certainly isn't adding to their blood alcohol level.

We have to make sure that we are absolutely responsible in everything we do to ensure that we don't do anything to contribute to drinking and driving in the province of Ontario. I honestly don't believe this bill does anything negative in that respect, but I am interested in hearing from the submitters.

**Mr Martiniuk:** Thanks, John. If I may have a few words.

**The Chair:** You've still got a minute and a half.

**Mr Martiniuk:** There are three areas of concern that I have that I would like to explore during the hearings.

The first is the state of the restaurant industry. We know there has been a problem with SARS with tourism, which has caused hardship to many of our dining establishments. We know that on the horizon we have inclinations of bars on smoking, or further restrictions with our restaurants which would impact on them to some extent. Here we have this scheme, which superficially may look harmless; however, I think we, as a committee, have the absolute necessity of hearing from individuals who are concerned with the economic viability of our dining establishments.

Second, I have a very great aversion to having bureaucrats or administrators making quasi-judicial decisions.

At the present time, the rights of suspension are vested with appointed board members who act in a quasi-judicial manner, and we are replacing them in effect with an administrator or bureaucrat who will make these decisions. I would like to explore that during this committee.

Last, the liability of the innkeeper or dining room owner is of some concern. There's a qualitative difference between the taking away of a bottle if, in the last resort, you have sold it to the individual and may still have some rights in the taking away of a bottle which is owned by the individual who comes into your shop. To me, there's a qualitative difference. I can see it as a potential problem, and I'd like to explore that.

**Mr Prue:** A most interesting bill, to see the whole range of people and their attitudes. I've just read all of the submissions, from those who think this is a wonderful idea to those who say it is condemned from the time of Lot.

We in the NDP were insisting that this come to committee. I think this is the appropriate place that these many opinions on the consumption of alcohol be heard because we need to know those who will be directly affected. So far, we've only heard from politicians and what politicians think. I've just looked through the list, and the list is quite exhaustive. We have people here representing MADD and the impaired driving committees. We have hoteliers, bartenders and their unions, police, municipal politicians, ordinary citizens, everybody who has an opinion on the consumption of alcohol and how this is going to change Ontario's somewhat antiquated laws.

I listened with some interest, as always, to the minister. He talked about the corkage machine. I would very much like to know where he can find a corkage machine for \$15 to \$20. As an amateur winemaker myself, I have priced them into the hundreds of dollars, and those are the cheap manual ones. If you get the electric ones, they are into the thousands of dollars. I don't know whether many hoteliers are going to want to invest in that kind of machinery, but even a used one, which I once thought I might like to have just as a conversation piece, was about \$175.

I don't know where you're getting the \$15 to \$20. If you can tell me where you can find one, I would be most interested in purchasing it.

**Hon Mr Watson:** Right here.

**Mr Prue:** I don't know what the hell that is, but I wouldn't use that.

**Hon Mr Watson:** It's \$14.99.

**Mr Prue:** That one on the left side is more like the ones the homemade winemakers use.

**Hon Mr Watson:** Fifty.

**Mr Prue:** Fifty. That's cheap still; I wouldn't trust it to work for very long.

Anyway, the second problem I have with the bill, and what I would like to hear is, I don't see any definition—I have heard what the minister says about bringing your own homemade wine. I make my own wine. I don't



know of anyone who makes their own wine who doctors it. I don't know anybody who adds alcohol to it. I don't know anybody who produces wine that doesn't run the normal range from about 9% for some of the Germanic wines to 15% for some of the stronger wines you might get out of Portugal or Spain. I just don't know of any range that goes beyond that, and I don't know people who add alcohol to it.

I am not naive enough to think that somebody might not, but this seems to be a fear that is not met, because ordinary table wine—and I haven't seen anything that would prohibit people from taking sherries, ports or Madeiras to their favourite restaurant. Those wines, commercially produced, run in the 20% to 30% range of alcohol. If you are going to allow those, I don't know what the prohibition would be on homemade wine, which, in the very best of cases, usually is around the 13% or 14% range in alcohol.

I'm curious to hear what staff has to say and what the minister has to say. The corkage machine—I'm glad you can show me one there that's \$50. I don't know what that other one is, but I definitely wouldn't use that. The one at \$50 is kind of interesting. I'll have to have a better look.

The table wines—it is somewhat problematic to me. There are many people in our society, upwards now of 15% and climbing, who make their own wines. There are some people who are very good at it. To deny them an opportunity to drink what they know to be a very safe product, a product that they do not add sulphites to, a product that they do not add chemicals to, a product that they are able to buy the grapes that they know might be organic or from the farm on which it was produced and feel very safe—to deny them in favour of commercially produced wine that can have alcohol contents, as I said in the case of Madeira, sherries or ports, that approach 30%, does not seem to me to have the strength of science behind it.

I'm anxious to hear what other people have to say about that as well.

#### MINISTRY BRIEFING

**The Chair:** I am going to call on the ministry staff, if they want to come up and give us a technical briefing on the bill.

I will first ask you to identify yourself whenever you address the committee.

**Ms Mary Shenstone:** I'm Mary Shenstone. I'm the director of the sector liaison branch in the Ministry of Consumer and Business Services. I have with me Paul Gordon, who's a senior policy analyst in my branch, and Rosemary Logan, who is counsel with the ministry.

I'm going to ask Paul Gordon to walk you through the technical briefing, and of course we would be happy to answer any technical questions, including the Madeira one.

**Mr Paul Gordon:** Just as background, Bill 96 was introduced on June 10 of this year and received second reading during October and was completed on November

1, and, as you know, the schedule of committee hearings is followed by clause-by-clause review on December 8.

#### 1610

The bill makes amendments to the Liquor Licence Act that would pave the way for bring your own wine and make several public safety reforms. The government, as the minister just indicated, is in the first phase of an initiative to work with the public and stakeholders on modernizing the act.

In terms of the first part, the public safety initiatives, the proposed amendments are:

A provision to allow the registrar of alcohol and gaming to suspend a liquor licence on an interim basis, if necessary, in the public interest. A hearing in front of the board of the AGCO would follow shortly. This would allow risks to public safety to be dealt with more quickly, and I think the minister has already given you some background on that amendment.

Second, the creation of a defence for failing to leave a premises when required by the police or returning the same day unless permitted to by the police. Again, this would allow the police to deal with public safety situations more effectively than they're able to at the moment.

Third, doubling the minimum fine for offences involving minors. The minimum fine on a licensee would increase to \$1,000. For a person who is not a licensee, it would increase to \$200.

The other major feature of the bill, of course, is it would pave the way for bring your own wine. The amendment that's in Bill 96 would introduce a definition of supply that would include wine brought on to a licensed premises by a patron. This would allow for regulatory changes, which I will talk about, introducing BYOW.

As the minister indicated, the government would propose changes to the regulations under the act introducing BYOW. Patrons would be able to bring commercially made wine into the restaurant. The licensee or server would be required to open the bottle and would continue to be responsible for ensuring against over-consumption. This would definitely be voluntary for the restaurant owner and optional for any licensed restaurant. The restaurant would need to apply to the AGCO, that is the Alcohol and Gaming Commission of Ontario, for what's called an endorsement on its licence. So we would introduce a BYOW endorsement. The restaurant would certainly be able to charge a corkage fee if it wished to.

Last, as the minister indicated, while it's not in the act, the government intends to introduce changes to the regulations under the Liquor Licence Act to allow for take home the rest. This would allow a licensed premises to offer patrons the service of removing a bottle of unfinished wine from the premises. This would be voluntary for the restaurant to offer this service. Wine must be recorked, and the intent is that it will be recorked with the cork flush to the top of the bottle before it can be removed. The licensee would not be able to permit a patron who is intoxicated to remove the bottle.

As the minister indicated, existing laws in the act would still apply. Any open liquor would have to be inaccessible to occupants in a vehicle, and public consumption of liquor would not be allowed.

**The Chair:** Thank you. Any questions and comments from members?

**Mr Prue:** I have questions. There is a whole movement afoot in worldwide wine-producing countries, and Australia is taking the lead, that they are no longer corking wine. They are starting to use screw-top fasteners because it is actually better hermetically sealed and there's less chance of corkage and waste. How would you propose corking a screw-top bottle? Because I've tried that, as an amateur winemaker. You invariably break the bottle.

**Mr Gordon:** We've looked at several screw-top bottles that are commercially available, and the cork does fit inside the bottle, and seals the bottle.

**Mr Prue:** It'll fit, yes. And how many times have you broken the bottle?

**Mr Gordon:** Or the other alternative is that the restaurant owner simply would not be able to allow the patron to remove the bottle if they're unable to sufficiently seal the bottle and ensure public safety when the bottle is removed.

**Mr Prue:** OK. Could you tell me the definition of "table wine"? Does that include wines that have brandy content, such as sherries, ports or Madeiras? Could people take those to the restaurant?

**Mr Gordon:** Those are considered fortified wines, and that is a commonly used term, and those types of wines would not be allowed to be offered in this service.

**Mr Prue:** Is there a maximum alcohol content that you will allow to be taken to the restaurant?

**Mr Gordon:** Table wines typically have an alcohol content that does not exceed 14% to 15%.

**Mr Prue:** The wine that Ontario has just chosen as its wine, starting tomorrow, is 15.4%—the red.

**Mr Gordon:** But as you indicated, fortified wines such as sherries and Madeiras are in the order of 30% to 40%.

**Mr Prue:** They're higher. But it is not uncommon to see some of the better Garrafeira and wines from Spain approaching 16% or even 17%. Will they be allowed?

**Mr Gordon:** Again, table wines will be allowed and it is the judgment of the licensee, responsible as a licence holder, to ensure the patron does not become intoxicated and that it's table wine that is being used.

**Mr Prue:** So the licensee has the discretion as to what kind of wine and how strong that wine can be?

**Mr Gordon:** They have the responsibility to abide by the regulations of the Liquor Licence Act and the responsibilities under the act.

**Mr Prue:** But what if I walked in with a good bottle of Garrafeira and it's at 16.5% or 17%; the restaurateur could say, "No, I won't allow you to have that because I think that wine is too strong?"

**Mr Gordon:** In the judgment of the restaurant owner, that is their choice.

**Mr Prue:** All right. I can see that there are going to be some conflicts already.

The question of people who make their own wine: Why are you disallowing or not allowing people—because I know many people who make wine, some of it excellent. Why would they not allow it? Are you afraid they're going to doctor the wine?

**Mr Gordon:** The licence holder, with homemade wine, wouldn't be able to confirm the contents of the bottle. In Alberta, the Alberta Restaurant and Food-services Association raised that as a concern with the government when they were considering BYOW. I think that is a legitimate concern for restaurant owners to assist them in offering the service.

**Mr Prue:** But surely if a restaurant owner can refuse a wine he thinks is too strong, like a Garrafeira, which is quite naturally produced—there's nothing added to it—on that strength, surely the restaurateur on the same strength could know me or you or one member here who was bringing in a bottle that he or she made, and it's not going to be something that is going to be poison or doctored or contain excessive amounts of alcohol, surely the same discretion must be given to the restaurateur.

**Mr Gordon:** But again, a label on a commercially made bottle of wine typically indicates the alcohol content that is in that bottle, so it does make it easier for the licence holder to confirm the alcohol content.

**Mr Prue:** But for a person who makes their own wine, it's quite easy; you can tell the alcohol content almost immediately. It's a very simple process. I could put that on my own label. I don't, but I could. Wouldn't that be sufficient?

**Mr Gordon:** In our view, it wouldn't be.

**Mr Prue:** Why?

**Mr Gordon:** Again, to allow the licence holder to ensure that there's no level of intoxication—

**Mr Prue:** OK.

**The Chair:** Sorry. Our time is up.

**Mr Prue:** OK. Thank you.

**The Chair:** Members of the ministry staff, I would like to thank you very much for taking the time—

**Mr Martiniuk:** I have some questions—

**The Chair:** Our time is up with them at the present time. The subcommittee has said 10 minutes for the staff. You could ask further questions if the whole committee will accept having a question.

**Mr Martiniuk:** I just have some points of clarification.

**The Chair:** Would the committee accept a question from the official opposition?

*Interjections.*

**The Chair:** Thank you.

**Mr Martiniuk:** Could you just give us the laws through the carriage of an open bottle of liquor?

**Mr Gordon:** Maybe I'll ask Rosemary Logan to speak to that.

**Ms Rosemary Logan:** Currently, the Liquor Licence Act prohibits carrying open liquor that's accessible to passengers in a vehicle. So if you have it, you're sup-



posed to have it in the trunk or somewhere else where you can't reach it, and that would remain in place.

**Mr Martiniuk:** Second, the change of suspension of licence by the registrar rather than the board is for a matter of convenience, I take it?

**Mr Gordon:** It's also an issue of public safety. As the minister indicated, there can be an issue of convening the two board members to consider the interim suspension. This would allow a more rapid response, especially in an issue of violence or immediate risk to public safety. There can be a faster response to that kind of situation.

**Mr Martiniuk:** Thank you, Mr Chair.

**The Chair:** Thank you very much to the staff for being here.

**Ms Shenstone:** Mr Chair, may I clarify one element with respect to Mr Prue? Your point about your 16% alcohol, whether it's in the estimation of that licensee whether the service of that alcohol level would lead to overconsumption: It's not a question of that particular bottle; it's whether the licensee feels that serving that alcohol would encourage overconsumption by that patron.

With respect to homemade wine, it's a matter of the integrity of the bottle. It's a matter of the integrity of the label on a commercially produced wine that shows the alcohol content by federal regulation.

**The Chair:** Thanks again for taking the time.

1620

#### GREATER TORONTO HOTEL ASSOCIATION

**The Chair:** I would now call on our first presenter, who is going to be Rod Seiling. He is the president of the Greater Toronto Hotel Association.

Good afternoon, Mr Seiling, and welcome to the standing committee on Bill 96, bring your own wine, or An Act to amend the Liquor Licence Act. You have 15 minutes. You can take the whole 15 minutes or leave some time for questions and answers at the end.

**Mr Rod Seiling:** Thank you. As you've indicated, I'm president of the Greater Toronto Hotel Association, otherwise known as the GTHA. I want to thank you for the opportunity to appear here before you today.

The GTHA is the voice of Toronto's hotel industry. We represent 154 hotels, with approximately 35,000 guest rooms and with over 32,000 full-time jobs. We are an integral part of the region's tourism industry, the second-largest industry in the city.

The GTHA supports Bill 96, an Act to amend the Liquor Licence Act, 2004. We are supportive because the principle behind the legislation is to offer the customer more choice. We are an industry that is built on customer service. We pride ourselves that we have demonstrated that, given a fair and equitable chance, we can and do compete very well in what has become an ever more competitive global marketplace.

Inasmuch as our long-term success will be based on our collective ability to grow our international and

United States business, it becomes all the more important that we provide our customers with as much choice as we possibly can. Bill 96 is what we would hope is the first step into a thorough review of Ontario's liquor licence laws and regulations.

We are not, I should add, advocating for a total opening of these laws. However, on the other hand, if we want to be recognized as a truly cosmopolitan destination, then the ability to offer bring your own wine is another tool to offer, especially to our customers who have had the opportunity to utilize it in their own country or while travelling in some other competing destination.

Our support for Bill 96 is based on the principles as outlined by Minister Watson. They are as follows: The BYOW provision is optional, with no impact on existing licences. Only the licensee or server would be permitted to open the bottle and would continue to have control re overconsumption and consumption by minors. The licensee will have the right to set the corkage fee. BYOW applies to only commercially bought wine. Licensees will have the right to set minimum food purchases.

We recognize that this option is not a panacea for an instant influx of new international visitors, but it will help to contribute to the perception that this destination can and does offer a unique experience.

We do see a benefit to this provision from an operational perspective as it relates to functions within the hotel. Many times the organizer of a function, be it a wedding or even a political fundraiser, for that matter, asks about wanting to bring in their own wine. The only way this can now happen is for that organizer to go apply for a special occasion permit. This extra red tape and time discourages many and also raises the question as to why the operator is being so difficult, as if it is their fault.

Under Bill 96, once it is enacted, a hotel could apply for BYOW status and offer customers this option. Of course, the same aforementioned conditions would apply.

We also see merit in the proposal to allow a customer to take home a partially opened bottle of wine. In the case of a rare and expensive bottle of wine, from a responsible consumption policy, we believe this is good public policy.

The tourism industry is in the midst of a turnaround in our business. As all of you will be well aware, we have weathered some very extraordinary and trying times these past few years, but I can say that we're well on our way to our economic renewal, and Bill 96 will continue to assist us in this economic renewal.

Thank you very much. I'd be pleased to answer any questions.

**The Chair:** Thank you. We still have 11 minutes. I will now go to the official opposition for questions or comments.

**Mr Martiniuk:** No questions, Mr Chair.

**The Chair:** Then I'll move on to the NDP.

**Mr Prue:** The question I have for the hotel association relates to people who serve at weddings, political functions in restaurants. When you go into the restaurant—and say the bill comes to \$100, just to round it off,

and usually you give 15%—if you bring your own wine and pay the corkage fee, then the amount would maybe come to \$60, and if you paid 15%, that would be \$9 as opposed to \$15. The people who work in the hotel, the chefs, the waiters, as a result of this—the food would cost the same. That would be the same, but the people who are doing the service likely can anticipate reduced tips. Do you see that as well?

**Mr Seiling:** As an individual who has close ties with people in organized labour, I don't want to put words in anyone's mouth here, but I believe that they have already had discussions about making other arrangements because it's no different from a function where gratuities are added on to the bill and those are distributed among the wait staff. So I don't see any difference in that procedure but, again, as to what the individual preference is for the employees, that could vary from location to location.

**Mr Prue:** What you're anticipating, then, is that some would choose not only a corkage fee but an automatic tip, an automatic gratuity?

**Mr Seiling:** I think there'll be some working out of ways and means for a share of the income.

**Mr Prue:** Because there is no doubt that if one just uses a percentage, and I think most people do—10%, 15%, 20% or whatever people feel comfortable with—certainly the actual cost on the bill will be lower. I'm not saying it isn't offset by how much you spent in the LCBO for that expensive bottle of wine, but the cost on the actual bill that you tip on will be lower in virtually every case.

**Mr Seiling:** It will be, but it's lower revenue to the operator as well because they haven't bought the wine. Again, I don't want to get into what the relationship will be, but certainly the corkage fee will appear on the bill, so there will be a sharing in that respect and in what the individual restaurant operator will be sharing. You can't share in something that you don't receive.

**Mr Prue:** I don't expect you to speak on behalf of the workers' associations, but have the hotel associations sat down with any of the unions that might represent wait staff or bartenders? I know that not all of them are unionized, but have you sat down with any of the unionized ones to see their position?

**Mr Seiling:** I haven't personally, but that comes up through a matter of contract negotiation, which each individual hotel does. But I certainly don't believe that anyone would be doing anything until this bill receives final reading. You're not going to do something on something that might happen.

**Mr Prue:** I have gone to restaurants, and once even to a hotel, I believe, that served wine made in a winemaking establishment with the hotel or restaurant label on it. Have you experienced that?

**Mr Seiling:** I'm not aware of it. I don't know of any licensee that serves—I'm not sure what you're referring to.

**Mr Prue:** I'm talking about stuff where one can go into any of these wine shops and make wine. In the city of Toronto there are probably 100 of them, maybe more.

**Mr Seiling:** I can't comment on that, Mr Prue. All I can tell you is that my members don't serve illegal product, and I think that's what you're talking about.

**Mr Prue:** I'm not saying it's an illegal product; anyone can buy it.

**Mr Seiling:** It is for a licensee.

**Mr Prue:** But you've never run into a restaurant or a hotel doing this?

**Mr Seiling:** Never.

**Mr Prue:** All right. Thank you.

**The Chair:** I would go on to the government side.

**Mr Rinaldi:** Mr Seiling, thank you for your presentation. We certainly appreciate the support from your association, because you're obviously the folks on the ground.

I just have a question for you; I didn't see it in your presentation. To help us as we move through this process, do you see any potential amendments that your association would like to see?

**Mr Seiling:** No. We're fine with what the bill has proposed.

**Mr Brad Duguid (Scarborough Centre):** Just quickly, I want to, on behalf of probably all members of the committee, thank you personally for the leadership you've shown in this particular industry and for coming forward today. I think your voice is very credible here at Queen's Park. Your industry has been through a tough time: 9/11, SARS, the blackout. I think we share your optimism that we're in for a bit of an economic renewal when it comes to tourism. This is not going to be the panacea, as you said, but every little bit helps, and we're hoping this will help contribute in some small way to working with you and your industry in this renewal. So I thank you for being here.

**Mr Seiling:** Thanks, Mr Duguid, and I want to thank the government for their help in our renewal because you've played a large part in it, and we hope you will continue to.

**Mr Duguid:** You bet.

**The Chair:** The official opposition would like to have a question or comment. You still have three minutes to go.

**Mr Yakabuski:** Thank you for joining us today, Mr Seiling. I didn't have any chance to ask questions at first because I came in late.

In other jurisdictions there's not a very high percentage of restaurants that participate in this program, if you want to call it that. Have you surveyed your members or gotten any feedback from your members as to how many would plan or expect to participate and allow for the bring-your-own-wine provision?

1630

**Mr Seiling:** We haven't done a survey per se. We've talked to individual members. We have made them aware of what was going on and certainly garnered their support for it. Once the bill is enacted, and whatever shape and format it finally comes out in once it receives third reading, we will then take them through the whys and wherefores of what's going on.



I think, from a hotel perspective, as I said in my presentation, that there's more likely a bigger and better reason for them to take the uptake on the side, as it relates to functions, because it removes a potential barrier. A lot of people believe that, when the hotelier says to the person who's planning the function and wants to bring their own wine, they need to get a special-occasion permit, that it's the hotel just putting a road-block in front of them because they really don't want to co-operate, when in fact that's the law. A lot of people can't be bothered to take the time or to fill out the red tape to get a special-occasion permit. Now, if it's passed as it is, a hotel can file to be designated as a BYOW. They then will be able to allow that function organizer, as long as it's commercial table wine, to bring that product in. So I do believe there will be an uptake on that basis.

Again, we'll walk people through the whole bill and what it entails once we see its final format.

**Mr Yakabuski:** What do you see as the likelihood of corkage fees minimizing the advantage, from a financial perspective, to the consumer? Do you expect corkage fees to—

**Mr Seiling:** There will be a corkage fee. The economics of running an establishment today—if you look at the margins, you simply can't afford to give up that revenue source or you won't have a business.

**Mr Yakabuski:** What I'm saying is, let's just say, for example, that a restaurant charges \$25 for a \$12 bottle of wine. Could we expect the corkage fees to be \$13 on that bottle?

**Mr Seiling:** I wouldn't comment. I think the marketplace will set it.

**The Chair:** Thank you very much, Mr Seiling. Just before you leave, I know you played for the Maple Leafs before—you've put your hand on the Stanley Cup—but I have two guys here who played for the Stanley Cup the other night. On Monday night, Mr Duguid and Mr Yakabuski didn't win the Stanley Cup.

**Mr Seiling:** They didn't? Oh, well, more practice.

#### CENTRE FOR ADDICTION AND MENTAL HEALTH

**The Chair:** Our next presenter is Dr Norman Giesbrecht, senior scientist with the Centre for Addiction and Mental Health. Once again, welcome to the committee. We appreciate the time you're taking to come and make a presentation to the committee. You have 15 minutes. You can take the whole 15 minutes or leave some time at the end for questions.

**Dr Norman Giesbrecht:** I'm going to read a brief statement and then I would welcome some questions.

Thank you for the opportunity to speak to you this afternoon. I'm a senior scientist at the Centre for Addiction and Mental Health and do social and epidemiological research on a number of topics, including alcohol policies and public opinion on alcohol issues. I am a co-chair of the alcohol policy and research group at our organization. This group develops position papers,

such as the one that was released in January with regard to retail alcohol monopolies.

I would like, first of all, to say a few words about the context, then speak to the specific proposal that is under consideration, and conclude with a few recommendations.

Alcohol is our most popular and widely used drug. Unlike tobacco, it provides some health benefits for some consumers, if used in moderation. It provides personal and social pleasure for many. It is currently considered an integral, if not essential, feature of many cultural and social occasions. The alcohol trade generates substantial revenues, employment and business opportunities.

It is currently widely available in Ontario, with about 1,400 outlets for package—that is, take-home purchases such as LCBO stores, agency stores, Beer Stores and Ontario winery outlets. There are also over 18,000 licensed premises in Ontario and 65,000 special-occasion permits per year. Hours of sale are no longer as limited as some years ago, and there are countless promotions and marketing techniques and extensive sponsorship of sports and cultural events. Given these developments, it is not surprising that our surveys show that 50% of Ontarians say they can get to their nearest beer or liquor store in five minutes or less, and 93% in 15 minutes or less.

While we know that drinking alcohol is also associated with both acute and chronic conditions, we may not know fully the extent of the damage. Alcohol is associated with intentional injuries such as assaults and unintentional injuries such as automobile accidents, and organic conditions such as fetal alcohol effects, cancer, neuropsychiatric disease, diabetes, chronic disease and gastrointestinal disease.

A 2002 study sponsored by the World Health Organization indicated that alcohol is one of the leading risk factors for cumulative damage, disease and death. In developed countries such as Canada, it is just below tobacco and blood pressure, and higher than cholesterol, body mass index, low fruit and vegetable intake, physical inactivity and illicit drugs, in terms of its contribution to the burden of disease.

It is expected that damage from alcohol is likely to increase in Ontario if the recent trend in rising consumption continues and if high-risk drinking does not decline. There is a well-established association between easy access to alcohol and overall rates of consumption and damage from alcohol.

Recent research focusing on Canada has shown that changes in overall rates of consumption are associated with changes in total mortality, traffic fatalities, alcohol-related mortality and liver cirrhosis deaths. As we drink more as a province or nation, and drink in ways where more of our occasions involve heavy or high-risk drinking, our societal rates of damage are likely to increase.

Also, we should be concerned with drinking patterns in light of the high proportion that still drink in risky ways and because of the link between drinking patterns and both traumatic and chronic damage from alcohol.

A national study, released just last week, included preliminary results from people surveyed in Ontario. It

indicated that about 20% of adult Ontarians drank heavily once a month in the past year, 23% exceeded the low-risk drinking guidelines and 17% were considered to drink in more hazardous ways in the past year, rising to 30% for those under age 25. In addition, the authors noted that 32% of respondents reported that in the past year they had experienced some harm due to drinking by others.

Examples of easy access or high availability of alcohol are the following: low price relative to the cost of living, high density of outlets, long hours of sale, low legal drinking age compared to our neighbours, inadequate server training programs, no challenge or refusal initiatives, and inadequate enforcement of liquor laws, to mention a few.

Ontario has done well in some areas in controlling access, and can do much better in others. The government alcohol retailing system can be an important tool in effective harm reduction when it comes to drinking problems—a tool that is not fully utilized.

Therefore, a key question with regard to Bill 96 is the following: Will it substantially increase access to alcohol, promote more drinking, promote high-risk drinking and therefore increase the risks and damage associated with alcohol use? As with many policy initiatives, it depends, in part, on the details.

A hypothetical scenario is one where it would be implemented without checks and balances; for example, with no limit on the number of bottles a patron might bring to the restaurant, no corkage fee, no efforts to seal a partly empty bottle before it's taken from the venue and if it was provided in places where staff are not trained to intervene if the patron is at risk of drinking and driving. Under such circumstances one would expect that access to alcohol, and hence the risks associated with its use, would increase.

However, the proposal under consideration signals awareness of some of the risks, and the framers of it should be congratulated for the checks and balances included in the draft legislation.

Our recommendations are framed with two principles in mind: One is the precautionary principle that one should not take unnecessary risks with public health and safety. The second principle is informed by our experience that there is a tendency to weaken alcohol regulation over time as new contexts for sale, distribution and access become more familiar and normalized. It is important to ensure that the research evidence about the link between access, consumption and social harm is not neglected because of our social experience with alcohol as a normalized drug.

For this reason, we recommend that the current checks and balances contained in the proposed legislation be considered the minimum interventions and standards required to protect public health and safety and that they be strengthened as needed, based on monitoring and evaluation of the impact of these changes.

1640

We recommend some areas in which the legislation should be strengthened before it is passed:

(1) That the proposed arrangements pertain to table wines and not be extended to include fortified wines, beer or distilled spirits;

(2) That a corkage fee be charged when patrons bring their table wine to the restaurant;

(3) That restaurant staff seal partially empty bottles before patrons take them from the premises;

(4) That all restaurant staff who are serving tables undertake training with regard to responsible service of alcohol and appropriate handling of patrons who have consumed to excess;

(5) That the arrangements for patrons to bring their own wine to restaurants only be allowed in connection with food service;

(6) That the program, based on this bill, be established through regulation indicating that it is being introduced for a two-year period and that the program only continue if evaluation of this trial period does not reveal substantial harm.

Thank you very much for your attention.

**The Chair:** Thank you, Doctor. We have seven minutes left.

**Ms Marilyn Churley (Toronto-Danforth):** Thank you very much for your presentation—most interesting. I lived in Montreal for a number of years a long time ago, and of course you could bring your own bottle of wine to restaurants there at the time. I must admit I was known to do that from time to time. As you said, it was very normalized there. Have you done any research specifically in those areas where they've had this in practice for some time to see if they're doing all of the things you're suggesting, and some of the problems, what works, what doesn't work there?

**Dr Giesbrecht:** There has been very little research on the Quebec experience. This is one of the reasons why we're recommending that this program be evaluated. The recommendations are based on research. There is a particular link between high-risk drinking and drinking without food. In other words, the more occasions where alcohol is consumed where there's no food, the more likely they're going to have high-risk drinking. That's why we're proposing food, for example.

**Ms Churley:** I believe in Quebec you do have to connect it with food. I'm pretty sure of that. I only did it when we went to dinner. OK. Thank you.

**Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot):** I want to thank you, Doctor, for your very balanced presentation. You spoke a couple of times about balance, and I think your brief reflects the thoughtfulness you've put into that. So thank you for that.

I would just note in passing that most of the caveats you have added there have already been responded to by the government. I think Mr Seiling made the point about a minimum food service order being a likely requirement.

That having been said, you talk about responsible drinking and pose the question if this will tend to increase it. I'm inclined personally—having a daughter who goes to McGill, having had the experience of having some options where it has actually decreased our own



drinking. The temptation to finish the bottle is something that I think we want to engender in folks. I'm wondering, has your association had any time to consult with your counterparts in Alberta or Quebec about their impact? I'm told by our ministry people that when we've had those contacts, they've indicated that there have not been the negative impacts that you suggest might be problematic.

**Dr Giesbrecht:** I'm suggesting that if it was made available according to the hypothetical scenario that I laid out earlier on, there would be problems, but I think there are some checks and balances already in place, and the presentation applauds the government for introducing it in that way.

There really has not been any research. There may be anecdotal information with regard to what's gone on in Alberta, Quebec or New Brunswick, for example, but there really hasn't been any research. It's a topic that hasn't been researched, and of course one cannot do the research on 24 hours' notice. It's difficult to say what the impact has been in concrete terms.

**Mr McMeekin:** A quick supplemental question: What are your views on the public safety reforms that are included in the bill? Do you like those? Do you feel they go far enough?

**Dr Giesbrecht:** I think the public safety things are good steps. It would be important to ensure that the best possible server training be given to all staff so they really know how to handle this unique situation. As we heard from previous presentations, patrons who have purchased the wine themselves and brought it to the restaurant may be very reluctant to give it up even though they may be intoxicated or approaching intoxication. So the staff need to be very skilled to handle that.

**Mr Yakabuski:** Thank you, Dr Giesbrecht, for your very balanced presentation. I want to commend you for the excellent work your organization does. You have pointed out how dangerous and damaging alcohol can be when it is abused, but you've also clearly accepted that, under the right circumstances and if handled properly, it in itself is not the problem. I think the minister addressed quite a few of the concerns you've indicated.

I commend you on the work you're doing. I think it is very important for all of us to ensure that we're not irresponsibly promoting alcohol, because we're very aware of the damage it has done in many situations, including families and employment and everything else. So thank you very much.

**The Chair:** Thank you very much for taking the time to come and address your concerns to our committee.

**Dr Giesbrecht:** Thank you for the opportunity.

#### POLICE ASSOCIATION OF ONTARIO

**The Chair:** Next is Bruce Miller, chief administrative officer for the Police Association of Ontario. Welcome to the public hearings on Bill 96, An Act to amend the Liquor Licence Act. You have 15 minutes. You can take

the whole 15 minutes or leave some time at the end for questions or comments.

**Mr Bruce Miller:** Thank you, Mr Chair. As you stated, my name is Bruce Miller and I am the chief administrative officer for the Police Association of Ontario. I was also a front-line police officer for over 20 years with the London Police Service.

The Police Association of Ontario, or PAO, is a professional organization representing over 21,000 front-line police and civilian members from 63 police associations across the province. We've included further information on our organization in our brief.

We appreciate the invitation to address the standing committee on general government on Bill 96 and would like to thank all the members for their continuing efforts for safe communities.

We have reviewed the proposed legislation in conjunction with our members and would like to make several comments. Our remarks will focus solely on any possible impact on community safety. As you know, the legislation would make a number of changes and we'd like to take the opportunity to address each of the proposals.

(1) Giving the registrar the power to issue immediate interim suspensions: We understand that this change would allow the registrar of alcohol and gaming to immediately suspend a liquor licence in the public interest where there is a threat to public safety. We appreciate that this provision would rarely be needed; however, we do see it as a common-sense provision and a necessary tool to ensure public safety.

(2) Amending the act to prohibit persons who have been required to leave a licensed premises by a police officer from remaining on the premises and from returning to the premises until the day after they left, unless authorized to do so by a police officer: This amendment clarifies what had been a grey area for police personnel. A police officer had the power under the act to order persons to vacate a premises in certain situations, but did not have the power under the act to enforce that order. Certainly, we see this as a positive amendment.

(3) Increasing minimum fines related to underage drinking: We support this change but would caution that increased fines and penalties are not always the answer. We'd certainly welcome the opportunity for further discussion with representatives of the hospitality industry and government to look at ways of jointly addressing this problem.

1650

(4) Changing the definition of "supply" to allow a patron to bring his or her wine to a licensed premises where permitted: We do not believe that the so-called bring-your-own-wine proposal will have any negative impact on community safety, as long as it is adequately regulated. We were concerned that bring your own wine should be limited to sealed LCBO products and that bottles should only be opened by the staff of a licensed premises. Finally, we felt that partial bottles should be properly resealed on a consistent province-wide basis by restaurant staff to prevent them from being easily opened.



We are pleased to say that we have been contacted by the minister's office to advise us that there will be consultations on the accompanying regulations and that these concerns will be addressed. The PAO believes that adequate regulations are the key to preventing any problems. I can advise the committee members that we have checked with other jurisdictions across Canada, and police associations have told us that they haven't seen any negative impact on community safety as long as proper regulations are in place.

In conclusion, in our view, Bill 96 would implement several changes that would have a positive impact on community safety. We believe that any concerns over the bring-your-own-wine proposal can be addressed through consultation and adequate regulations. The unified voice of the Police Association of Ontario has always been a key resource to government on all matters relating to policing. Building on our shared goal of making Ontario communities safer, we have worked with successive governments on a number of important policy files, sharing our experience and expertise.

Our members have worked closely with representatives of the restaurant, hotel, motel and hospitality industries over the years to ensure public safety. We look forward to working with their representatives and government to ensure that adequate regulations are put in place to accompany Bill 96. We would also be pleased to participate in any discussion on the future reform of the Liquor Licence Act.

In closing, we would like to thank the members of the committee for the opportunity to appear here today. We greatly appreciate your interest in community safety. We'd be pleased to answer any questions you may have.

**The Chair:** Thank you. We have five minutes left, and we'll proceed with the government side.

**Mr Duguid:** Let me begin by thanking you for coming here on behalf of your members. We recognize that if we mess up on the laws that we make here, your members end up being the people who have to clean up our messes. So we thank you for being here and we thank you for endorsing and supporting pretty much what's before us.

You may be aware that we are in the process now of getting ready to consult with the public and stakeholders on our efforts to modernize the Liquor Licence Act and further enhance public safety. You've indicated a willingness to be part of that. I'd like to welcome you to that consultation and hope that you'll be part and parcel of our discussions in that area and, as well, ask you, in the seconds remaining, if you'd like to expand a little bit on your comments on the minimum fines, if there are more things we can do with regard to underage drinking. I think we'd be most interested in hearing your view on that as well.

**Mr Miller:** I think one of the problems with increasing fines is that police officers obviously have discretion whether or not to charge a person. You'll get me off on a tangent here, obviously, but the reality is that some of the fines for traffic offences and liquor offences really

exceed some of the sentences that we see handed out for serious criminal matters, such as break and enter. So we like to put things in perspective. If the fines are too high, police are somewhat reluctant to enforce them.

We have had some unofficial discussions with the hotel, restaurant and motel industries and we realize some of the concerns that those members have in terms of identification and what types of identification should be used. We have great confidence in those industries in Ontario. We have very responsible owners of those establishments. We think that together we can look at ways of controlling underage drinking, some sort of standard identification or numbers of identification necessary. As I say, the vast majority of restaurant, hotel and motel owners of licensed premises are very responsible, and they share our concerns.

**Mr Duguid:** We look forward to hearing your views further in the future. Thank you.

**The Chair:** Now I will go to the official opposition side.

**Mr Martiniuk:** Mr Miller, I'd like to thank you for providing your expertise and that of your association in the deliberations of this committee. I know you served the community of London for 20 years with distinction. I congratulate you for taking the time to help this committee.

**Mr Yakabuski:** Thank you for coming, Mr Miller.

In a nutshell, would I be correct in saying that you have no real concerns about the bill—maybe a desire to have some discussions on cleaning up some of the small print or the nuances, that you want to make sure public safety is of paramount importance in enacting them?

**Mr Miller:** First of all, I'd just like to thank Mr Martiniuk for his comments. We certainly enjoyed our time when we worked with him, when he was on the crime commission. He worked with our organization very closely.

In answer to your question, in terms of the bill, we certainly endorse all of the community safety initiatives—the fines, the interim suspension and the changes to the act. In terms of bringing your own wine, we don't see any negative impact, and that's from checking with associations across Canada. As long as there are proper regulations in place—and I know Mr Duguid was speaking earlier and said that sometimes when regulations are written they can cause some damage because people don't appreciate the outcome of some of those regulations. But we think that if we sit down with representatives from the hotel and motel industry, we can ensure that there are proper controls in place. It certainly has to be standardized across the province too, we believe.

**Ms Churley:** Thank you very much for your presentation. Just a quick question. Because this isn't, as you outlined, just about bringing your own wine but some other changes, is there anything that you'd like to see in this bill that isn't here, just in terms of some of the issues and problems that we hear about in our constituencies?

**Mr Miller:** I think that was one of the issues that I mentioned earlier, that we could work together to look at



controlling underage drinking. That's certainly a step that we can take. The important thing, again, is just to say that the regulations are so vitally important to ensuring community safety, to make sure that bottles can't be easily opened when people leave premises, that they are properly secured.

**Ms Churley:** I guess I was thinking more about, because it's covering some other areas that you mentioned as well: Is there anything glaring that's been left out in terms of—you think this pretty well covers some of the things that we need to be changing and improving?

**Mr Miller:** Not that we saw, or through any feedback from our members.

**The Chair:** Thank you very much, Mr Miller, for taking the time once again. As Mr Duguid said, you might be getting a call later.

**Ms Churley:** You might?

**The Chair:** It's not up to me to decide.

### TAXIGUY

**The Chair:** Our next presenter, la prochaine personne à faire une présentation, c'est Justin Raymond. He's the president and founder of Taxiguy.

Welcome, Mr Raymond. You have 15 minutes to make your presentation. You could take the whole 15 minutes or leave some time at the end for questions.

**Mr Justin Raymond:** OK. Although I'm flattered by the francophone pronunciation, it's actually Justin Raymond. And believe it or not, my middle name is actually Maurice.

Each of you has a package in front of you and I'll ask you to draw from that package as I go through the presentation, just so we can keep things in line. This is going to be relatively new to most of you and possibly all of you.

Why I'm here today is to address the needs for a safe transportation plan in all licensed establishments in Ontario.

First, before we get into the facts as to why that should be instituted, I'll introduce my operation, the business that I founded seven years ago here in Ontario, and have moved across the country to bring the benefits of safe transportation facilitation to governments, corporations, not-for-profit groups etc.

1700

Taxiguy is a nationwide network of cab companies all linked together through one easy-to-remember, toll-free phone number: 1-888-TAXIGUY. Our research indicated that 88% of people did not know a correct phone number for taxicab service in their hometown, let alone every single town in Canada that they would be travelling to and potentially drinking in. We wanted to solve that problem, and therefore we harnessed the power of telecommunication technology to create what has become one of the most unique and powerful drinking-and-driving solutions in the world today.

We have over 700 cities and towns across the country that are covered under our toll-free phone number. We

have over 425 network partner cab companies that participate and service the calls on a 24-hour basis. We have facilitated over one million rides to date. On September 24 in Kingston, Ontario, that ride was facilitated from a pub, taking a person from a pub to their home. There is no quarter required at a pay phone, which obviously creates a more convenient route for people, and a more cost-effective route in some cases. No phone book is required any more, and we use very reliable telecommunication technology to support the infrastructure.

Our mission as an organization is to complement and expand the social responsibility initiatives by corporations, government departments, not-for-profit groups and charitable organizations around drinking-and-driving prevention. Our stakeholder support comes in many forms. Just to rhyme off some of the more significant ones: the Ontario Community Council on Impaired Driving, on whose board I sit; the Canada Safety Council has recently endorsed our services and programs. Might I add that we are a for-profit business but our values and mission are in the right direction, and it does not complicate any endorsements from these types of organizations whatsoever.

We have countless stakeholder relationships in the police forces across the country. We have great relationships in the business community. Prime Restaurants of Canada, which is East Side Mario's, Casey's, Prime Pubs; great movers of alcohol and food, by volume some of the most significant licensed establishments in the country, and the decision-makers behind those operate excellent return-on-business operations. Shoeless Joe's is our provincial partner, which has 35 licensed establishments across Ontario. Gabby's Restaurant Group is the municipal partner, the local operation. They have approximately 11 locations in Toronto. In total, we have over 250 licensed establishments that have supported our program, which is called the Smart Call program, which is a turnkey safe transportation plan for licensed establishments across Canada.

We also have a relationship with the ORHMA, the Ontario Restaurant Hotel and Motel Association, which supports what we do, and we have letters of support, which you will find in the package that I handed to you, on the right-hand side. Marilyn's letter is actually on top; thank you for that, Marilyn. I will ask you, perhaps after I'm done, to maybe sift through these and take a look at some of the people who have written letters for their areas, be they local ridings or provinces or the entire country.

I sit here in support of Bill 96, and I will explain why at the end of my time. But there is one glaring improvement required in the Liquor Licence Act of Ontario: A safe transportation plan, as described in the AGCO house alcohol policy guidelines sheets handed out to licensed establishments, should not be optional any more or a simple business decision. This should be a condition of licensing and be enforced by the licence inspectors across the province.



Why would we want to enforce a safe transportation plan? Perhaps before I advance any further, this is what I'm talking about. These are the house alcohol policy guidelines that are distributed to the licensed establishments that receive licences to serve alcohol. Number 6 in the expected guidelines clearly states that they need to "adopt a safe transportation plan," including identifying and ranking transportation options, confirming necessary arrangements with outside companies and advertising the program to their patrons.

The obligations of the licensees under the Liquor Licence Act of Ontario are: section 29, not to overserve patrons, which is obviously paramount to the entire reasoning behind this; and section 39, the civil liability, and all of the precedent-setting cases that we've seen under that. The court obligations now, be they provincial or federal, have defined that there is a special relationship that exists between licensees and patrons. The special relationship exists because an economic benefit is derived, meaning that when they sell alcohol they're making money and probably the highest profit margin inside of anything they're selling at that location; therefore, a special relationship has been clarified.

There is not only a duty-of-care expectation, there is an enhanced duty of care, as claimed by the courts in Canada and in the provinces, and reasonable steps must be taken—"reasonable steps," as in putting a safe transportation plan into the licensed establishment.

Why enforce a safe transportation plan? For the servers, it's extremely difficult to keep an eye on and babysit every single patron in a licensed establishment, especially if they have multiple service bars in the establishment—for example, some of the clubs. There's a direct conflict of interest between the server's ability to make money and to potentially have to cut off patrons when they reach a point of intoxication. Servers are caught between a rock and a hard place, and so are restaurant owners who are supposed to be the people who oversee this and back up their servers. But the problem there is that licensed establishments make most of their money off alcohol sales, and they need that money in order to pay the rent and keep the lights on.

The observation-based tactics of the Smart Serve training program are somewhat effective; however, being observation-based, they are reactionary by nature and not proactive enough. It clearly states in the Smart Serve Training Workbook that for the invisibly intoxicated, or people with a tolerance to alcohol, "It is entirely possible for a guest to be too drunk to legally drive, and still show no signs of visible intoxication. This creates a problem for servers." It certainly does create a problem for servers.

Moderate drinkers consume alcohol at a rate that potentially impacts ability to operate a motorized vehicle. Moderate drinkers will push the boundaries of risky BAC—blood alcohol content—levels. The largest percentage of patrons who visit licensed establishments are moderate drinkers. We have knowledge that the "approach a licensed establishment decides to take when

handling an intoxicated guest who may drive could be the most important decision regarding responsible beverage service"—the Smart Serve Training Workbook.

We have knowledge that it is impossible for servers to know which patrons plan on driving. We have knowledge that overservice of alcohol may and does occur. All we have to do is look at the AGCO inspections. We have knowledge that drinking and driving may occur and does occur—over eight million trips every year in Canada, according to the Traffic Injury Research Foundation. We have knowledge that a safe transportation program could save lives, reduce injuries, and avoid the negative trickle-down effect on society, which affects all of us—families, businesses and governments.

We have knowledge that the AGCO expects their licensees to participate in programs aimed at drinking and driving and explicitly state that a safe transportation plan is a key component to any house alcohol policy, in this document right here. Finally, we have knowledge that, of the over 1,000 licensed establishments in Ontario contacted by our organization, none had a safe transportation plan in place.

Why am I here today? Because I want to get this on the record. I want to let you know that it is needed by servers, by patrons, by all communities across Ontario, by police groups across Ontario, by the hospitality industry and by government.

My call to action is for a mandatory implementation of a safe transportation plan in all licensed establishments in Ontario, as described in the AGCO alcohol policy guidelines, and it must be supported by enforcement through liquor licence inspectors.

Our view on Bill 96: This is a public safety issue to our organization. As the president of a small business that embraces the opportunity to promote responsible use and as such supports legislation regulating the sale and service of liquor, I am quite pleased with the reform package proposed within Bill 96. Strengthening the consequences for and enforcement of underage drinking offences will help reduce harm caused to youth. Promoting a take-home-the-rest option for wine drinkers encourages customers to be moderate with their consumption. Enforcement is key as well.

**The Chair:** Thank you, Mr Raymond. We have enough time for one question from each of the opposition parties.

1710

**Mr Yakabuski:** I appreciate you joining us here today, Mr Raymond.

On the safe transportation plan, as a rural member I have a question with regard to the ease of implementation of that. Could a safe transportation plan simply be the willingness or the undertaking to call someone? In communities where I live, there is no public transit, no taxis, yet we do have establishments that serve alcohol. I'm just wondering what the expectation is in a safe transportation plan, because if it includes taxi service or a public transportation service, there are situations where it's simply not accessible.



**Mr Raymond:** There are many options to avoiding a drinking and driving incident, and all of those are actually inside of our programming message, which first of all is to call the number of a taxi, if it is available. I believe that the percentage of the population that would be serviced by a taxicab is in the neighbourhood of 92% in Ontario.

**Mr Yakabuski:** That's very high.

**Mr Raymond:** It's very high, so it's a good starting point. In other communities that don't have taxicab transportation readily available, there are other alternatives—designated driver programs. First of all, the people who arrive with you at the location interact with the components in the safe transportation plan and understand that if a decision is going to be made as to who's going to be drinking or if all the people are going to be drinking, they have to take into consideration the designated driver.

**Mr Yakabuski:** So that can constitute a safe transportation plan?

**Mr Raymond:** Not on its own, but yes—

**Mr Yakabuski:** But it doesn't have to have public transportation or a taxi service in order to be able to have one?

**Mr Raymond:** You need to utilize outside companies, as it explicitly states in the AGCO house policy guidelines. So by going by this definition, I would suggest that—

**Mr Yakabuski:** How would we do that in a rural community? Let's just say for Wilno, which has absolutely no opportunity and there will never be public transportation there.

**Mr Raymond:** If there is no public transportation and there's no taxicab service, where the responsibility falls is on the licensee. That licensee, if they detect somebody who is intoxicated, has two options: to take care of their patrons themselves—drive them home—or contact the police. So the other vehicle that can take people away is a provincially funded car.

**The Chair:** I will now move on to Ms Churley.

**Ms Churley:** I certainly don't have that problem in my riding. There are lots of taxicabs. I now know why I always check my letters for typos really well: You never know where they're going to show up. I thank you for including this. I was thrilled to hear about this program and I hope to see more of the establishments in my riding getting involved in your program. It's great.

I guess you used this as an opportunity today to tell more people about the program so more people are aware of it. You don't have a whole lot extra to say about the bill before us, I assume.

**Mr Raymond:** You are correct. For the record, I have met with several people at many different levels of the AGCO and I've had a difficult time getting the message across.

**Ms Churley:** At the what?

**Mr Raymond:** At the AGCO, the Alcohol and Gaming Commission of Ontario.

**Ms Churley:** Oh, of course. I used to be the head of that once. And what's the problem?

**Mr Raymond:** I just never really received responses or answers to my questions. I thought this would be a great opportunity to—inside of the Liquor Licence Act.

**Ms Churley:** Good idea. I hope so too. Thank you.

**The Chair:** Thank you very much, Mr Raymond. Again, the points you have raised are definitely well taken by the members of this committee.

## WEBERS DOWNTOWNER RESTAURANTS

**The Chair:** The next group we have is Webers Downtowner restaurants; Mr John Weber, the owner.

Just a second. We have to see if there's a vote in the Legislature.

We have to apologize. Whenever the bell rings, we have to listen to whether there's a vote or not. The Speaker is back in his chair.

Once again, Mr Weber, thank you for taking the time, and welcome to the committee. You have 15 minutes to make a presentation, of which you can take the whole 15 or leave some time at the end for questions.

**Mr John Weber:** I just want to go through some of the highlights of my presentation. This isn't normally the forum I operate in, so I'm a little shaky.

**The Chair:** You can proceed.

**Mr Weber:** My name is John Weber. I operate two restaurants in Barrie and Orillia. They're both liquor-licensed restaurants. I want to thank you for the opportunity to discuss—mainly my focus and concern is the bring your own wine; it's not the whole reform. Just to be honest, there's so much information there, I can't really comment on it that well.

My first question is, where is the public outcry for this reform coming from? When did the people march in protest demanding BYOW? When did BYOW become a political top priority? To me, that's how I would think things would happen.

The minister claims that he is setting out to improve consumer choice. My question is, at what cost and at whose expense? To increase public safety—I'm very concerned about public safety. The gentleman who spoke previously has a lot of good ideas.

My question is an obvious one: Why are we about to enter into potentially dangerous reform without more study and more consultation? I would love to be a part of a committee or anything that steers this. I would volunteer for it right here and right now, because it is a big concern to me. Being a licence holder, it's a big responsibility.

The minister said he wanted to reduce burdens for small business. I think nothing could be further from the truth in this law when it comes to BYOW. It puts more burden on the operator—a lot more burden. There is already a huge burden on anybody who owns a liquor licence. It's a very valued piece of paper. The administrative burdens on small business are already crippling, and this reform, I think, would only add to that burden.

Alcohol and the serving of alcohol are a huge responsibility. It must remain in the control of a sober operator, not the drinking patron.



Many of the people I've spoken to play out a lot of scenarios, but they're always assuming the person you're dealing with is logical and sober. After three glasses of wine, nobody is logical; nobody is sober. But you have to deal with that person, and that is what I'm putting out as my question. It makes my job that much tougher.

How do I cut a person off after he or she has brought in their own wine and then deal with the abuse? When people bring in their own bottle of wine, there is a form of possession and ownership. It's a special moment; they might be celebrating a wedding anniversary, the birth of a child, whatever it might be. They're bringing in their bottle of wine. That's their property, and now you're saying, "I have to cut you off from your piece of property." Yes, I have the right to, and yes, I cut off patrons if I have to, whether it's their wine or not. But you add a new element to it when somebody brings in their own property. There is an embarrassment level, there is a conflict level that I don't want to go through in my restaurant.

Again, you could say to me, "Well, Mr Weber, this is a voluntary law; you don't have to participate." Agreed, but there are a lot of regionalities that go on, and I can see both sides of the coin.

Earlier, the minister himself—I was listening to him speak—said, "This would be a great idea down around Pelee Island or the Niagara area." I tend to agree with that in that regional area. In my area there are very few restaurants; there are probably 10 in the city of Orillia that are legitimate restaurants. It wouldn't be that voluntary. If four or five participate, the other four or five or six had better, or else. There's too much pressure; it's not like being in Toronto with all of the choices.

This reform empowers the customer to dangerous levels. That's one of my biggest concerns: the power the customer could misinterpret through this law by bringing in their own property. I am liable and responsible for this person and their actions. That's a big responsibility to carry.

My insurance has gone up by three times in the last four years. I don't know what the insurance industry would do with this. I think it would be a heyday the minute there's one incident or one case where there was a take-home bottle in the car. I think the insurance companies would go crazy about it, personally.

You're telling me that the laws, these reforms, are voluntary. My question is—and I'm not trying to be sarcastic—when was a smoking law, when was a seat belt law voluntary? I don't understand a voluntary law with this bring your own wine. I think there's a flaw to it when you say it's voluntary. That's my belief.

Who is going to determine what the patron is in fact bringing into the restaurant? Is it homemade wine? That was addressed earlier. Is it port, with a 20% alcohol content? There is a lot of grey area with this law, and I think there's a lot of room for misinterpretation, and then all of a sudden I become the BYOW police officer. I don't really want to do that. I want to run a restaurant, but I do want to have control over it, being the sober

proprietor, as opposed to getting into a conflict with somebody who has brought their personal property into my restaurant.

Actually, I could go on for a long time, but you've all got my submission and I'll end it at that. It is something I feel strongly about, and I think small business has enough challenges. Especially in the restaurant business, there are a lot of challenges we've dealt with, and you've heard them all before. I just think this takes some power away from the proprietor and I think it's dangerous when somebody who has been consuming alcohol is now buying into the direction that this is going.

1720

**The Chair:** Very good, thank you. Now we have nine minutes left; three minutes from each party. I will be starting with Ms Churley from the NDP.

**Ms Churley:** Thank you very much. You raise some, I think, really important points and something that perhaps, when you get to the government, you can have an exchange about. I think to a lot of people this is perhaps not a big deal either way, right?

**Mr Weber:** I agree.

**Ms Churley:** As far as I'm concerned, it doesn't much matter to me, which is why it's so important to hear from people it's going to impact, like you. Is your association part of the—

**Mr Weber:** No.

**Ms Churley:** So do you know if the association representing bars and establishments supports this with reservation, fully supports it or what?

**Mr Weber:** I spoke to the Ontario restaurant association and they said, "John, don't get too excited. It's not a big deal." I said, "Well, any law, to me, is a big deal, any reform is important, because I operate within that forum every day." They said, "Only 3% or 4% actually participate in this. It's nothing to get excited about." But again, my concern is, once you open the door and once it is open, and once the reforms are made—I do have concerns about it.

**Ms Churley:** If the government goes ahead with this, I assume you would like to make sure you or representatives from your industry who have the same concerns have an opportunity to be involved in the regulations.

Overall, what I'm hearing is you would prefer not to have this, since, overall in Ontario, it's probably not a huge, big deal. On the scheme of one to 10 of what we're most worried about, that's not up there. Why impose something new on you now when you're struggling to—I believe that's what I'm hearing you saying.

**Mr Weber:** There are enough challenges. Would I be against it if somebody said, "Regionally, this would really be a benefit to the wine region of Ontario"? I'm not against that if it's regional, local.

In my area, alcoholism is fairly high; it's fairly common. Earlier, the minister was speaking about—I forget his exact words—"finesse" wasn't the right word, but "civilized," I believe, was one of the words he used



earlier. He said, "It would be very civil to do this." Not all areas of Ontario are civil.

**Ms Churley:** Name names.

**Mr Weber:** There are some outlying areas where people think—people in my area might think wine is Jack Daniel's.

I don't really want to get involved in this. It puts me in a very uncomfortable position. As I said, I don't want to be the police officer at the door—

**Ms Churley:** Can I interrupt, because he's going to stop me soon, I know. You asked the question about it being voluntary. What I understand that means is, you can choose as a restaurant owner to allow it or not.

**Mr Weber:** Agreed.

**Ms Churley:** And so, to you, what would be the problem with that?

**Mr Weber:** The problem is, Ontario doesn't allow a happy hour any longer. We haven't had one for years. You could use this corkage fee very easily as a happy hour. Mondays, Tuesdays, Wednesdays: no corkage fee. Why not?

**Ms Churley:** So they could have an advantage over you, in that sense, those who choose to do it.

**Mr Weber:** Absolutely. It dangerously, to me, makes it very attractive to consume more alcohol. I've been taught by Smart Serve, the Liquor Licence Act and everybody else, "You are not supposed to be enticing customers to increase their alcoholic consumption."

I think this law, if passed, could be manipulated by a lot of people to really open up and have a heyday. My final line in this, with a little touch of humour, says, "Don't turn Ontario into Daytona Beach at spring break." And I mean it. I think this could really blow the cap off it.

**Ms Churley:** Blow the cap off it—there you go again.

**Mr Weber:** Literally.

**The Chair:** Thank you, Ms Churley; your time is up. Now it's the government side's turn.

**Ms Deborah Matthews (London North Centre):** First, let me genuinely say, thank you for coming. I think this is the process working the way it's supposed to work, where people can come and express their points.

**Mr Weber:** I agree; I think it's terrific.

**Ms Matthews:** You've raised some issues, some concerns. You know that other jurisdictions have done this. There are many in Canada and around the world that have done it. I just wonder if any of your fears have actually been found to be true in any of those jurisdictions, to your knowledge.

**Mr Weber:** I don't know, because this came around fairly fast. I apologize. Ideally, I would like to have had more time for study and for research. As I said, I would love to volunteer for any future work that you do on it. I'd drive to Toronto six days a week to work on it, because it is important to me; I'm a proud resident of this province. But I have concerns, and I haven't had enough time to research how it is applied and how it works in other areas.

The biggest thing for me, being an operator, is the liability and my responsibility for the safety of my patrons. It's tough when somebody's had too much to drink. People don't think reasonably, they don't act logically, they don't always keep safety in mind. I just think that when somebody has brought their own product in their own possession—one of my things is, what happens if one of my staff, God forbid, dropped the \$500 bottle of wine? It just breeds conflict for me in a working environment, and it could happen.

**Ms Matthews:** You certainly sound like you speak from experience on this. Thank you very much for coming.

**Mr Weber:** It's been my pleasure.

**Mr McMeekin:** Thanks, Mr Weber. Did you happen to be here when the police made their presentation?

**Mr Weber:** Yes, and I sort of feel like I'm out in left field on this when I hear everybody else. They're saying—

**Mr McMeekin:** Or the restaurant association here in Toronto?

**Mr Weber:** Yes.

**Ms Churley:** He's calling you a party-pooper.

**Mr Weber:** Yes, exactly.

**Mr McMeekin:** No, no, I'm not; believe me. I've got enough natural enemies without looking for them.

**Mr Yakabuski:** Not over here, Ted.

**Mr McMeekin:** No, no, of course not.

You asked the question, and I take it it was a rhetorical question, about where the pressure is coming from. I think the pressure has been coming from a tourism industry that's been hit hard—there was some reference to diversity: tourists, people from different countries—and certainly from the law enforcement sector, which has had some very legitimate concerns that I suspect you share about security and safety, and not encouraging over consumption, which is what the take home the rest is about.

**Mr Weber:** It's never been my experience that way.

**Mr McMeekin:** Do you see some advantages to the take-home-the-rest portion? Wouldn't that reduce—

**Mr Weber:** That's never been a concern, though. Normally, we do monitor our customers—

**Mr McMeekin:** You can't do it now.

**Mr Weber:** No, agreed. But I've never had that question posed to me in 15 years. I've never had someone say, "Can I take this home?" We do keep a close eye on our patrons: how they're behaving, their body language, the level of their voices. Are they getting a little bit aggressive, out of control that way?

**Mr McMeekin:** I'm not worried about you; you obviously do a good job.

**Mr Weber:** I try to do a good job, and it's a huge responsibility and liability. I am in charge of the safety of everybody who comes into my restaurant. That's the bottom-line concern.

**The Chair:** Our time is up. Sorry about that. Thank you very much for taking the time and passing on your concern.

The next presenter will be Adam Vassos.

**Mr Yakabuski:** Pardon me. Do we not have any questions?

*Interjections.*

**The Chair:** Sorry; you're right. I made a mistake. Sorry, Mr Weber. Would you mind taking your seat again? I didn't get the official opposition party to ask a question. They have three minutes too.

**Mr Yakabuski:** Thank you very much, Mr Chair. Sorry to put you back in the chair, Mr Weber.

**The Chair:** We have two people on the panel, but only one can ask them.

**Mr Yakabuski:** Your statement about this blowing the cap off it: I take it that, in your opinion, if this happens we'll need more than one of these machines to get it back in. Is that the case?

**Mr Weber:** That's one of many.

**Mr Yakabuski:** I read in the newspaper today too; you were quoted, and one of the things you had some concerns about was insurance liability.

1730

**Mr Weber:** Absolutely. My insurance has tripled in four years, without incident, without any occasions at all that have ever happened. It's just simply the nature of the insurance industry, which is very popular in the newspaper lately.

I have a huge concern. If there is any incident or accident in the next year or two where something is involved that they could tie to BYOW or take home the rest, I would think the insurance underwriters would be all over it and would say, "Boy, we have to add another 50% to your premiums to cover this potential damage. A family was killed."

**Mr McMeekin:** I bet your insurance will go down.

**Mr Weber:** I would love it if it did.

**Mr Yakabuski:** I must say that I did speak to an executive with the Insurance Bureau of Canada today. He indicated to me that they have no concerns about this bill affecting anybody's premiums or liabilities. They have no concerns with that whatsoever.

**Mr Weber:** That's welcome news; it really is, because the insurance is a huge factor.

**Mr Yakabuski:** They don't believe this will have any impact on your—

**Mr Weber:** I'm not saying that the bill will. I don't think the bill will have any effect. I think the minute there's one problem, one accident, or, God forbid, one death, then I think you've got—I don't think the bill will affect my insurance at all.

**Mr Yakabuski:** Do you think this bill will actually lead to more alcohol consumption?

**Mr Weber:** I do; and I think it's from the aspect of people manipulating it. I don't think it's in the spirit of the bill. I don't think that's what this bill is about. I'm not fighting the bill as much as the way it can be manipulated, the way people can say, "There's a corkage fee. Well, you know what? Monday, Tuesday, Wednesday and Thursday are my slowest nights—there's no corkage fee." It's no different than somebody with their half-price

chicken wings. Make it attractive, make it fun, get people to come in and drink more.

**Mr Yakabuski:** But would it not be counter-productive to a business to be eliminating a corkage fee on the very product that is—they need that income. Alcohol is one of their biggest profit-margin items. They're going to build in the corkage fee, I would think, to compensate for the loss of that income on the alcohol they would normally sell out of their businesses. By eliminating the corkage fee, would they—I'm curious as to what they would accomplish.

**Mr Weber:** I'm just saying, to increase business on slower nights of the week. If you're charging \$25 on a Friday night for a corkage fee and \$5 or nothing on a Monday night, to me, it's encouraging consumption.

One thing that we didn't get to touch on was, I was concerned from the government's point of view about the tax loss. I would think there's a loss of tax revenue here. If somebody is buying a bottle of wine from me at \$24 or from the liquor store at \$12, there's a difference on tax collected.

**Mr Yakabuski:** You're right about that.

**The Chair:** Now our time is up. I apologize for the mistake.

**Mr Yakabuski:** Oh, not at all.

**The Chair:** Thank you again, Mr Weber.

#### ADAM VASSOS

**The Chair:** Again, Mr Vassos, welcome to the committee. Thank you for taking the time to come and make your presentation.

**Mr Adam Vassos:** I'll start by introducing myself. My name is Adam Vassos. I'm a lawyer here in Toronto. I've been practising here for the past 15 years. My area of practice is business law, with a large concentration in the hospitality industry. I do a lot of work at the Alcohol and Gaming Commission of Ontario. I represent several licensed establishments in Ontario, from Windsor right through to Kingston, down to Niagara Falls, basically from the bottom of the province up to as far as Lake St Joseph. I represent stadiums, restaurants, universities, nightclubs and lounges. I also represent the Windsor restaurant and nightclub association. I represent the largest licensed establishments in Ontario, but I also represent some of the smallest licensed establishments in Ontario. I'm also a member of the Canadian restaurant association. But today I'm here on behalf of myself, as an interested party and as a lawyer who has appeared before the AGCO on several occasions over the past 15 years.

In particular, I'd like to speak to you about my concerns with respect to Bill 96, specifically with respect to the proposed amendment to subsection 15(6), which deals with interim suspensions.

Presently, the way 15(6) appears is exactly the same as it appears in the proposed amendment, except that the word "board" appears where the word "registrar" appears in the proposed legislation. The proposed change takes away the power and responsibility of the board of the



Alcohol and Gaming Commission and transfers it over to a bureaucrat: the registrar of the Alcohol and Gaming Commission.

I'd like to explain to you that an interim suspension is a very extraordinary remedy. It's a remedy that's only imposed in exceptional circumstances. I know; I've appeared before the board on several occasions when they've attempted to impose these types of extraordinary remedies. It's a remedy which is not only designed, but has the effect of essentially crippling the business. That's what it's there to do.

The legislation reads that it can be imposed when it's "necessary in the public interest." Many people feel that really means when it's a concern for public safety. But, in fact, if you look at the case law, "public interest" has been defined to mean a lot more than just public safety.

Let me tell you a little bit about how the process works from a licensee's point of view so you can understand and appreciate the system they're dealing with. And then I'll explain to you, from a licensee's point of view, what the economic and political implications are if this bill is passed.

Presently, under the existing legislation, if the registrar believes there are sufficient grounds to suspend a licence on an interim basis and wants to revoke that licence, what he does is issue a notice of proposal to revoke, as well as a motion for an interim suspension. The licensee is provided with the opportunity to attend on that motion with respect to the interim suspension. A board of two members is convened. This board is trained in hearing evidence, in making determinations of facts, and is capable of making decisions based on the evidence. The registrar has the onus of proving, on a balance of probabilities, to that board that this particular licence should be suspended immediately on an interim basis, pending the revocation hearing. The licensee is afforded the right to attend that motion, to cross-examine on the evidence, to present rebuttal evidence and to make submissions on his behalf with respect to that motion.

The registrar is not trained in hearing evidence, he's not capable of making determinations of fact and he's certainly not accountable for making decisions of this magnitude. You can't have the same person who makes a decision to discipline someone also determining what that discipline should be. Presently, he makes a determination that the matter should proceed to discipline; the board decides what the discipline should be.

This bill, in its present form, takes away a person's right to be presumed innocent until found guilty. This is a breach of the rules of natural justice and it's a complete disregard to due process. Due process is a right that's guaranteed under the Charter of Rights. That's the penultimate legislation in Canada. The right to due process is right at the core of this democratic society in which we live. This legislation I don't believe will withstand a constitutional challenge. I think we have to look quite importantly at what type of legislation we're passing here, if it's not going to be able to withstand a constitutional challenge.

The way the process will work—I've described to you how it works so far—if this legislation is passed, is as follows: If the registrar feels there's a problem with the licensed establishment that warrants an interim suspension, then he determines that that establishment is suspended immediately. That establishment, under the act, is afforded a right to a hearing within 14 days. But that hearing is not to hear the interim suspension; it's the hearing to deal with the revocation part.

There are two problems with that: (1) When you're moving for a revocation, sometimes 14 days isn't enough for a licensee to find a lawyer, get prepared and defend a huge hearing that the registrar could have taken six months to put together. (2) Just because you have a hearing in 14 days, during which your licence is suspended, doesn't mean that after the hearing you get your licence back. In the past 15 years, every time I've been involved in a hearing, 90% of the time the board has reserved its judgment. What that means is, they'll go away, saying, "Thank you very much. We'll take your case under consideration and we'll issue an order." I've been involved in cases that have taken two months, three months and sometimes longer than three months to get a judgment.

What that means in this situation is that you have an establishment that gets its licence suspended immediately on an interim basis because the registrar decided; it's suspended for 14 days; then you go to a hearing; and after that hearing is completed, you could still be suspended for another two or three months until that decision comes back from the board. When the decision comes back from the board and you've been closed now for two or three months plus the original 14 days, the board may say, "There's enough evidence here to revoke your licence." Well, no harm, no foul. But if the board comes back, as it does in many cases, and says, "There's not enough here to revoke your licence. We think that a two-week suspension is appropriate," how do you compensate a place that's been closed for three months? Most establishments require the income that's generated from the sale of alcohol, to stay open. If you've got a restaurant, a bar or a tavern and it can't sell alcohol and it's closed down for three months, it's not going to survive three months. So when the board comes back with its decision three months later and says, "Do you know what? Everything is OK. We're going to give you a two-week suspension," sorry, it's too late. That place is gone, it's closed; no more revenue, no more taxes, no more employees. Some of my clients employ hundreds of employees. They pay PST, they pay GST.

1740

There are over 18,000 licensed establishments in Ontario. You cannot put the fate of 18,000 licensed establishments in the hands of one person: the same person who decides that he wants to investigate, the same person who decides that he wants to prosecute. That person should not be provided with the power to say, "Not only are we going to prosecute, not only are we going to proceed, but I've decided that I'm going to



suspend their licence.” That is a complete breach of the right of due process.

In a province that’s been ravaged by the effects of 9/11, SARS and the smoking ban, all the businesses we’re dealing with are treading on thin ice. Instead of trying to generate ways that will make the operations of these businesses easier, we’re making it more and more difficult. Taking away an establishment’s right to due process would be considered by many as draconian.

Most of these establishments cost millions of dollars to build. They provide millions of dollars to the economy in construction, architects, finishing, the sale of equipment and assets, and then, when they open, they employ people. As I’ve said, they pay PST, GST, income tax and corporate tax. We should be doing everything we can to encourage more establishments to open in Ontario, not scaring them away.

I respectfully request that this bill not take away the power that’s been afforded to a board, through the Legislature, to make these kinds of decisions and put it in the hands of a bureaucrat. I would respectfully request that you allow businesses the right to due process.

Those are my submissions with respect to subsection 15(6).

After hearing the last statements regarding the supply section, the bring your own alcohol, although I wasn’t prepared to make any submissions on that section, I think it’s important that I make some, only because I’ve spoken to several of my restaurant clients in this regard. Some of the concerns my clients have raised with respect to the supply section—bring your own bottle—deal with the requirements of the licensee to basically become a policeman. As you’re aware, the licensee, through the Liquor Licence Act and the Provincial Offences Act, has several requirements and laws it has to abide by in the service of alcohol. One of the most important is the situation with respect to the consumption of alcohol, dealing with persons who are going to be cut off, dealing with persons who show signs of intoxication and have to be cut off. How do you treat a situation where you’ve got a group of four people who have come in for dinner and they’ve brought two, three or four bottles of wine? What happens if one of those persons at the table shows signs of intoxication? How do you deal with that? Do you take away the entire party’s bottles or do you say you can’t serve this person? When you’ve got an establishment that has three or four waiters for 20 tables, how can you assure yourself that the person who has been cut off doesn’t have wine poured into their glass by one of the other persons?

How do you deal with situations where you cut people off—and I understand that machinery looks fantastic for resealing or recorking the bottles. But what happens if you’ve got an individual who has half a bottle of wine left and leaves? You reseal his bottle. He goes out and pops the cork himself with a corkscrew, drinks the rest of the wine in his car, drives off, gets into an accident and, heaven forbid, passes away. They do a blood check on him and his blood alcohol is through the roof. How does

the licensee prove that when that person left the establishment his blood alcohol was fine and he was OK? He’s not going to be able to do that. All they’re going to know is that he was at this particular person’s establishment and he drank alcohol—albeit he brought it himself, but he still drank alcohol there. The responsibility is then with the licensee. I can tell you—it’s not very difficult; you can find this for yourself—I’ve got a number of cases where, when that happens, the licensee loses their liquor licence. It essentially takes away their right to earn a living. At least when you are providing alcohol to a person, you have the right to cut them off very easily, and they can’t leave with that bottle, cork or no cork.

Those, Mr Chair, are my submissions. Thank you very much.

**The Chair:** Thank you. We only have three minutes left. If I go to two questions from the government side and the official opposition, they have to be short questions.

**Mr Rinaldi:** Very short, Mr Chair. Not to interfere with your personal business, but you’re representing the folks from the Greater Toronto Hotel Association?

**Mr Vassos:** I’m sorry, I can’t hear you.

**Mr Rinaldi:** Are you speaking on behalf of some of the Greater Toronto Hotel Association people?

**Mr Vassos:** No. As I said today, I’m here on behalf of myself.

**Mr Rinaldi:** I realize that. But do you represent any of those people in your—

**Mr Vassos:** I represent several people and I represent some hotels, not the actual association itself.

**Mr Rinaldi:** Because they put in a submission in support of it. So I guess I’m getting some conflict.

Another quick question, just to point out: You raised concerns about when you have multiple people and guests at the same table. What’s the difference between now and then?

**Mr Vassos:** What’s the difference between now and then? Now, you wouldn’t sell them four bottles of wine. That would be impossible.

**Mr McMeekin:** You wouldn’t open four bottles.

**Mr Vassos:** They could, absolutely. Under this legislation, if you brought in four bottles—

**Mr Rinaldi:** The server has to open the bottles of wine.

**Mr Vassos:** That’s right.

**Mr Rinaldi:** The server has still got all the control. I’m just a bit confused. What’s the difference, whether he buys it from that restaurant or brings himself what he bought at a liquor store? I don’t see it. The server still has the same control. We’re suggesting, in the bill, that the server has the same control.

**Mr Vassos:** You’re suggesting.

**Mr Rinaldi:** That’s what the bill says.

**Mr Vassos:** Right. But at the same time, my argument was, how do you stop a person who’s brought his own bottle? How do you stop that person from serving another person at the table?



**Mr Rinaldi:** Because the server does the serving, the same that he would now.

**Mr Vassos:** See, the difference would be this: Presently, the way the system works is, if you had two people and you were serving them alcohol and one of the persons started to exhibit signs of intoxication, you'd cut off the table. Under this legislation, if there are four people, and they've each brought in their own bottle of wine—which, theoretically, could happen under this legislation—you couldn't do that. You'd only be able to take away one person's bottle of wine, if you could at all. I'm not even sure, legally, you could take away their bottle of wine, because that belongs to them, not to you.

**Mr Rinaldi:** The server pours.

**The Chair:** Your time is up, sorry. I've got to go to the official opposition.

**Mr Martiniuk:** Mr Vassos, are there any statistics or anecdotal evidence in regard to the percentage of prosecutions brought to the two members of the Liquor Licence Board? In other words, how many do they refuse, or do they always grant them?

**Mr Vassos:** That evidence is not kept per se, in that sense. You'd have to actually do a search, which wouldn't be impossible. You'd have to do a search to determine how many cases of interim suspensions have been held and then determine how many have resulted in the suspension. I can tell you that I'm aware of two in recent history that have not resulted in an interim suspension.

So for this legislation to proceed, you'd have to assume that the registrar is always right. That's the only way this would work. If the registrar is always right and is never wrong, then you're fine. But the fact that there are cases where the board has not agreed with the registrar tells me that the registrar is not always right.

**The Chair:** Thank you very much for bringing to our attention your concerns.

**Mr Vassos:** Thank you, Mr Chair.

#### CITY OF TORONTO

**The Chair:** The next group is the city of Toronto, councillor Kyle Rae. Mr Rae, you have 15 minutes. You can take the whole 15 minutes or leave some time at the end for questions or comments. You can proceed.

**Mr Kyle Rae:** Thank you for giving me the time to speak. I was here this morning in support of the province's new legislation on heritage. I was here at 11:30 for that, so it's nice to be back again on another provincial issue that I support, and that is bringing in the new legislation of Bill 96.

I'm in support of bringing your own wine. It's a voluntary program, and I think it's a breath of fresh air. I remember lobbying in 1986, back when Steve Offer was the minister in charge of the amendments. It's taken that long for the government to get back to looking at significant amendments to the liquor act. So I'm thrilled that there's another opportunity to reassess the sobriety and the responsibility of Ontarians and taking a new,

fresh look at it. I think the two ideas, the bring-your-own-wine and take-home-the-rest, are innovative and they are a breath of fresh air to this jurisdiction of Ontario. As you are well aware, it occurs in other jurisdictions and it's about time we caught up with the rest of the world.

**1750**

My focus will be on the public safety issues. As MPP Duguid knows, having worked with him for years at city council, and as Marilyn knows from the work I've done with you over the years, my ward has probably about 1,500 liquor-licensed establishments. The 51 and 52 divisions are very busy in terms of liquor; lots of disorder created in the downtown, especially on hockey nights. So I know the problem with—probably it was you, councillor. What do they call you now? Brad.

**Mr Duguid:** Brad's fine.

**Mr Rae:** Yes, you were always a problem after those hockey nights. There's been a long history of problems—

**Ms Churley:** Do tell.

**Mr Rae:** His office was decked out like Maple Leaf Gardens. It probably still is; I'm not sure.

But we did have a problem with misuse of alcohol and we've had a hard time dealing with the issue of alcohol in some locations. Part of the problem has been that we haven't had a good turnaround in response from the police or from the AGCO in dealing with problem addresses.

The previous government did bring in legislation that helped us sterilize a site, but that was after having gone through a lengthy process and the police being able to convict.

I'm looking forward to your allowing for the immediate suspension of a licence to ensure public safety in the hands of the AGCO. That is a very important piece of your new legislation. I hope that will be able to be acted upon without a conviction. It can take a year to get a conviction on some instances of drug abuse, drug dealing, pimping, the problems we have in some of the bars downtown. It's very difficult for the police to get a handle on it or to get to court with it.

If you have a residential neighbourhood that witnesses the behaviour on a nightly basis, sees the public urination, sees the pimping outside the bar, sees the problems of drugs and illegal alcohol—sometimes it's illegal alcohol, sometimes it's over-serving of alcohol. The neighbourhood is very well aware of the problem but it's often very difficult to follow through. If we had a more open system with the AGCO being able to follow through with the complaints from our residents to the AGCO with this immediate suspension of licence, it would be very helpful.

The key for me is your bringing into compliance with the rest of the world the bring your own wine, take home the rest, but the public safety piece is so very important for me and the constituents of downtown Toronto.

I'd also like to add that there have been some other smaller issues which I understand will be dealt with in the next phase of your looking at the Liquor Licence Act, and that is the issue of the police charging some bars for



allowing people to take their liquor or the glass that had their liquor in it into the washroom. There has been an amazing change in public attitude about that. People are not prepared to leave their liquor at the bar or at their table because people are slipping GHB or other date rape—

**Ms Churley:** Date-rape drugs.

**Mr Rae:** Well, GHB is the date-rape drug, but that kind of incident is happening and people are very reluctant to leave their beer or their glass of wine at the table or at the bar. As long as you keep that on the books, that will continue to be used by the police as a way of enforcing—I'm not going to say harassment. In some cases, people feel their bars are being harassed, and that's what's been used by the police to harass them. But that has come up time and time again in the bars in my constituency.

There's also a problem in some parts of the city where you have old house-form properties—houses—that have been converted into bars, into restaurants, and the counting of people in each room is very strictly contained. In the summer months, if there are 25 people who leave a room and go to the upstairs room where there's a balcony and they go and stand, that becomes overcrowded, if they've left the ground floor. The police will charge them for being overcrowded upstairs while being undernumbered at the grade level. Have I lost you or do you understand what I mean?

**Mr McMeekin:** I understand you.

**Mr Rae:** It makes it very difficult—

**Mr McMeekin:** I'm an upstairs sort of guy.

**Mr Rae:** We have some very strict enforcement, which I understand and support because of fire regulations. I don't want to see people die in an overcrowded bar. But there needs to be some understanding and—I hate to use the term “discretion” because, often, discretion isn't properly used; it can be used to harass rather than to support. But there needs to be some latitude in the legislation, and that may be in your second phase.

Once again, I want to come and support you in dusting off the 1987 legislation that Steve Offer had done under the Peterson government. You're coming back to do it again and I congratulate you.

**The Chair:** We have six minutes left and it's the turn of the official opposition.

**Mr Martiniuk:** Mr Rae, you, being with the city of Toronto, have had some misfortunes with bureaucrats. I would tell you that in this particular bill—there has always been the immediate right to suspend. That right, however, was vested in two members of the commission. This bill would provide that the registrar, rather than two appointed members—the registrar being a bureaucrat—has the right to suspend. There has been some discussion as to whether that is the way go to. What is your opinion?

**Mr Rae:** It may well have been the case that under the existing legislation commissioners would be able to suspend a licence. In all my dealings with troubled properties where I've had customers murdered or doormen murdered, there has been no will on the part of the

commissioners to suspend. In fact, I've had to go around the back door and try and get the licensing commission to withdraw their licence to operate as a business, and that in itself is a difficult process. That can take a year.

If they're providing a new piece of legislation which provides another avenue, which is the registrar, to enact a suspension, then I'm all for it. The more people who are able to do that, the better. It's lodged in two hands, right now. Given the murders, given the assassination of the doormen at the front door at two locations—at 1 Isabella and 647 Yonge Street in my ward—I couldn't get them to move. The only way I got them to stop operating was by the police putting up the ribbons around the front door. They kept them up for a week and that shut down the business. That's the only way I could do it.

**Ms Churley:** Councillor Rae, are you a sports fan?

**Mr Rae:** No, not at all.

**Ms Churley:** The reason I raise it is because I think I should get some kudos as the former minister responsible for allowing, for the first time ever in the Dome and sports stadiums in Ontario, beer and wine to be served in the stands. That was so popular, I made it to the front cover of the *Toronto Sun*. That's framed in my office. That's what it took. Do you remember that? It was a very popular move.

**Mr Rae:** It was a good move.

**Ms Churley:** Thank you for acknowledging that.

On a serious note, overall—I lived in Montreal years ago, as I said earlier. My daughter was born there and she turned 30. We were bringing our own—

**Mr Rae:** She's 30 now?

**Ms Churley:** She's 30 now, Kyle.

We used to bring our wine then and it wasn't an issue. There is one area of concern. You weren't here for it, but we had one owner of an establishment today who came and expressed concern for himself and other small businesses in terms of all the problems and issues they've had in Toronto since SARS and a bunch of other things. This is one more thing they have to deal with. I'm just wondering if you're hearing any of that from establishments in your riding, waiters, the owners, and that kind of thing.

**Mr Rae:** Are you referring to the bring your own?

**Ms Churley:** Yes, bring your own.

**Mr Rae:** It's voluntary. I haven't heard any negative—I think Ontarians get used to being told how to manage their liquor, and it's been very tightly controlled in our jurisdiction for many generations. People are used to it, growing up with it being just the way it is. It's hard to change. Even when it's good change, people still find it difficult to adjust to change.

I'm looking forward to the time when people will be able, on Pride weekend, to walk up and down Church Street with liquor in their hand. They do it in Montreal; they do it in Europe.

Right now, in Frankfurt, there is a festival every Christmas—it's already started; it started on Monday—where all the office buildings empty and people come down to a Christmas fair where there are little shops where people can buy wooden ornaments and chocolate



and they're all drinking gluwain, which is hot wine, or hot cider. They're spending their evening with their workmates, drinking publicly. Imagine. And there are no barriers with police officers staffing them, raking in 45 bucks an hour. It is a civil society.

If we continue to coddle our culture into not being able to handle alcohol, then we'll continue to have problems with alcohol. But I don't see that problem in Europe. Did I get off topic?

**Ms Churley:** A little bit.

**Mr Duguid:** I'd be remiss, it being national AIDS day, if I didn't acknowledge the incredible work that Councillor Rae has done on that issue through the years, both in the city of Toronto and well beyond.

Councillor Rae has been the largest advocate in terms of—well, I don't mean largest in that way—the foremost advocate in the city of Toronto when it comes to trying to make the downtown a place of destination for entertainment, and I think that's incredibly important.

He's also been the foremost advocate on Toronto council for making sure those bad players that are operating out there are being met by justice. It's for good reason. He's the landlord of a ward that has probably the bulk of the problems in this city when it comes to bars. So I want to thank him for the good work he's done there.

I don't think there's time for him to share any more horror stories with us, but I've heard them time and time again in my previous life. I appreciate all the work he's done.

**The Chair:** Thank you very much, Councillor, for taking the time. It's good to hear the comments of our colleague Brad Duguid.

**Mr Rae:** Do you want to hear more?

**The Chair:** I call this meeting adjourned. Thank you.

*The committee adjourned at 1804.*

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## CONTENTS

Wednesday 1 December 2004

<b>Subcommittee report .....</b>	<b>G-537</b>
<b>Liquor Licence Amendment Act, 2004, Bill 96, <i>Mr Watson</i> / <b>Loi de 2004 modifiant la Loi sur les permis d'alcool, projet de loi 96, <i>M. Watson</i>.....</b></b>	<b>G-537</b>
Statement by the minister and responses .....	G-537
Hon Jim Watson, Minister of Consumer and Business Services	
Ministry briefing .....	G-542
Ms Mary Shenstone, director, sector liaison branch	
Mr Paul Gordon, senior policy adviser, sector liaison branch	
Ms Rosemary Logan, counsel, legal services branch	
Greater Toronto Hotel Association .....	G-544
Mr Rod Seiling	
Centre for Addiction and Mental Health.....	G-546
Dr Norman Giesbrecht	
Police Association of Ontario .....	G-548
Mr Bruce Miller	
Taxiguy .....	G-550
Mr Justin Raymond	
Webers Downtowner Restaurants .....	G-552
Mr John Weber	
Adam Vassos .....	G-555
City of Toronto.....	G-558
Mr Kyle Rae	

16  
23

Government  
Publication

G-23



G-23

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## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 6 December 2004

# Journal des débats (Hansard)

Lundi 6 décembre 2004

## Standing committee on general government

Liquor Licence  
Amendment Act, 2004

## Comité permanent des affaires gouvernementales

Loi de 2004 modifiant la loi  
sur les permis d'alcool



Chair: Jean-Marc Lalonde  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 6 December 2004

Lundi 6 décembre 2004

*The committee met at 1556 in room 151.*LIQUOR LICENCE  
AMENDMENT ACT, 2004LOI DE 2004 MODIFIANT LA LOI  
SUR LES PERMIS D'ALCOOL

Consideration of Bill 96, An Act to amend the Liquor Licence Act / Projet de loi 96, Loi modifiant la Loi sur les permis d'alcool.

**The Chair (Mr Jean-Marc Lalonde):** I call this meeting to order. First of all, on behalf of the standing committee on general government, I'd like to wish you all welcome to this public hearing on Bill 96, An Act to amend the Liquor Licence Act. Also, I would like to remind everyone that people have until 4 o'clock tomorrow afternoon to submit an amendment to the act.

## MADD CANADA

**The Chair:** We will proceed immediately with the first presenter, Mothers Against Drunk Driving Canada, Mr Andrew Murie, chief executive officer. Good afternoon. Mr Murie, you have 15 minutes. You can take the whole 15 minutes or leave some time at the end for questions by the members of this panel. You can proceed.

**Mr Andrew Murie:** Thank you, and I'd like to thank the committee members for giving MADD Canada an opportunity to speak on Bill 96.

Before I comment directly on Bill 96, I want to step back and vent some of our organization's frustration with liquor licence reform in this province.

In 2002, our organization, with many other stakeholders, spent a lot of time giving input as an advisory group on proposed recommendations to the Liquor Licence Act. I am baffled and I am not pleased that Bill 96 is not the liquor licence reform we were expecting. I view Bill 96 as cherry-picking a few reforms that you perceive as the flavour of the month.

Some of the recommendations from the advisory group included: introduce a new, tiered system evaluating liquor sales licences, including mandatory liability insurance; change the existing system of special occasion permits; enhance server training programs; introduce new grounds for the suspension and revocation of a liquor licence; consider the social responsibility background for candidates for the AGCO board.

A lot of these points, plus others, were also recommended by the Ontario Public Health Association in their letter of November 13, 2002, which is attached to my presentation notes as well.

On the specific issue of bring-your-own-bottle, the advisory group recommended that there was a need for controls to be put in place and a need for broader public input before the group was prepared to offer a recommendation.

Therefore, when it was announced that Minister Watson was considering introducing legislation to allow bring-your-own-wine, BYOW, we were left wondering what the motivation was for this announcement. Our organization has made it very clear that we are in favour of liquor licence reform, but not piecemeal reform.

MADD Canada is not in favour of BYOW because there is a wide body of evidence by the World Health Organization and others that there is a direct relationship between the price of alcohol and consumption rates. Lower prices of alcohol tend to lead to more alcohol-related harms, including impaired driving.

The other issue is that Minister Watson claimed there is great public support for BYOW. The advisory group has advised the government to seek out broader support on this issue, not just an ad hoc poll the minister conducted through his office.

MADD Canada, through SES Research, polled a random sample of Ontarians on May 29 and May 30, 2004.

Question 1 read: "As you know, the Ontario government is proposing new liquor laws that will allow people to bring their own bottles of wine to restaurants. Do you strongly support, somewhat support, somewhat oppose or strongly oppose a bring-your-own-wine policy for restaurants in Ontario?" The results of this question: 19% of Ontarians strongly support BYOW, 25% somewhat support it, 14% somewhat oppose it, 27% strongly oppose it, 9% were unsure of their support or opposition, and another 7% had no response to that question.

Our second question was: "Do you think a bring-your-own-wine policy for restaurants would increase or decrease or have no impact on the number of people who drink and drive?" The results of this question: 43% of Ontarians felt there would be an increase in the number of people who drink and drive, 2% felt there would be a decrease, 48% felt there would be no impact, 6% were unsure, and 1% had no response to that question.



As you can see by the SES poll, there is no great support for bring-your-own-wine. The Bill 96 legislation should not be a priority for this government.

I also don't buy into the concept that just because not a lot of restaurants will choose to have a BYOW policy, it is then OK to move forward with this legislation. If there is not widespread public support for BYOW, why is this government considering a legislative change that the empirical evidence shows might increase alcohol-related harms in our community?

My last point on Bill 96 is on the issue of liability insurance. Since it is not a requirement of the Liquor Licence Act for a licensee to have liability insurance, BYOW introduces a new question of who's responsible. Under the present Liquor Licence Act, it is really clear that the licensee and the server have the responsibility of not serving patrons beyond the point of intoxication. For example, if I were to bring to a BYOW restaurant special selections from my private wine collection, am I now in control of the product? I will start to dictate to the server who gets served and in what amount. The line that used to be black and white is now grey. My question to you is, has this government fully explored all the legal implications of liability? I would also highly recommend that the mandatory liability insurance issue be dealt with immediately.

On the reform of increasing fines for serving minors, it's a step in the right direction. It falls well short of dealing with the issue of underage drinking. The advisory committee looked at such issues as increasing the requirement to two pieces of identification and for the AGCO to increase compliance checks to ensure that licensed establishments are not serving minors. Without proper ID checks and enforcement levels, increasing fines will have relatively little impact.

In closing, I would like to ask this government to put aside Bill 96 and advise the minister to consider a full reform of the Liquor Licence Act with representation from all stakeholders.

Attached to my notes are the letter from the Ontario Public Health Association and our two press releases dealing with bring-your-own-wine. Thank you.

**The Chair:** Thank you. We will proceed with questions. We have approximately two and a half minutes left for each caucus. Any questions from the official opposition?

**Mr Gerry Martiniuk (Cambridge):** Yes, sir. As I understand MADD's position, it is simply that this particular reform should be part of a broader general reform of the Liquor Licence Act?

**Mr Murie:** Yes, sir.

**Mr Martiniuk:** Were you promised this? There seems to be an indication in the attachments to your brief—the press release of June 10, 2004—that certain promises were made to you in regard to general reform of the act. Would you like to comment on that?

**Mr Murie:** Sure. When we met with the minister prior to any legislative reforms, we again stressed that we liked the recommendations from the advisory group and we

were promised that we would be kept in the loop on any changes to the Liquor Licence Act. So we were quite surprised when bring-your-own-wine was announced without any heads-up for our organization or any consultation on that.

**Mr Martiniuk:** Thank you.

**The Chair:** Ms Churley.

**Ms Marilyn Churley (Toronto-Danforth):** Let me start by saying how much we all appreciate the very important work you do, and thank you for coming forward with your concerns. We haven't heard a lot on the concerns side; we've heard a lot on the support side.

In that vein, I just wanted to ask, have you had an opportunity to look at all at places like Montreal and Quebec, for instance, to see if any of the regulations and things they have in place could make a difference if this were to go ahead? It probably will, because they do have the majority here. If it were to go ahead, is there anything you would suggest that might improve it for you?

**Mr Murie:** Yes. One of the things that we've always said would improve this legislation would be a set high corkage fee. That way, you're not really lowering the price of alcohol; rather, you're bringing more wine from collectors or prize wine, where there's less likely to be dangerous consumption levels.

**Ms Churley:** I see. It's along the lines that lower prices cause more drinking, and we all know that's so.

**The Chair:** Now the government side.

**Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot):** Mr Murie, thank you. I'm the father of three teenaged girls, two of whom drive, and one for whom I just paid \$800 to have lessons on defensive driving, so I appreciate this. If there's a fathers against drunk driving, I'd certainly be a charter member of that. Thank you for the work you do.

Just by way of information-sharing, as the recently named parliamentary assistant, the minister has asked me to engage in a fuller, more comprehensive review in the new year, so we will be doing that. The former minister—I think it was Minister Hudak—is on record as supporting the changes here.

I'm wondering, though, did you happen to catch or know of the presentation of the Police Association of Ontario the other day?

**Mr Murie:** No, I didn't see that presentation, although I understand it was very favourable. But I went back and talked to the OPP officer who served on the advisory committee, Inspector Larry Moody, and he confirmed for me that he agreed with our philosophy that this should not be a few reforms but a total liquor licence reform. Again, that's from the perspective of the police representation of the OPP.

**Mr McMeekin:** I appreciate that.

Let me just share with you part of what the police association said to some rather pointed questions. They said they could advise the committee members that they had "checked with other jurisdictions across Canada, and police associations have told us that they haven't seen any negative impact on community safety as long as



proper regulations are in place.” You’d probably agree with that. “In conclusion, in our view Bill 96 would implement several changes that would have a positive impact on community safety.”

So it’s moving ahead with those recommendations that the minister feels we can move on, acknowledging that we need a more comprehensive approach, and also an emphasis on community safety. Can you comment on the community safety aspects in the bill for us?

**Mr Murie:** I think the one on the minors is a step in the right direction. But clearly, all the research shows that just having tougher sanctions doesn’t work. Any good legislation needs public awareness and enforcement, whether by the AGCO or police. That’s a big part. That’s how you make these types of things work. I have no doubt that if the legislation is highly enforced and highly policed, it can be effective and reduce the community harms I’m speaking of. But it also has the risk, if not properly supervised and not properly legislated, that it can have those negative things. None of us wants to read about one of those in the paper.

**Mr McMeekin:** We sure don’t.

Again, I just want to thank you and your group for your tremendous work. Keep it up.

**Ms Deborah Matthews (London North Centre):** Let me echo what the others have said about the good work you do. I wonder if you could comment on the take-home-the-rest component of the legislation. Do you have an opinion on that aspect?

**Mr Murie:** Yes, we’ve always been supportive of that. We’ve been clear on that right from day one. Rather than people finishing off alcohol they don’t need, it makes sense to bring the rest of that home, if you seal it and it’s properly controlled. We’ve never had an issue with that part of it.

**The Chair:** Thank you for taking the time.

Just before we proceed, I’d like to point out that according to the minutes of the subcommittee, the two persons at 5 o’clock and 5:30 will only have 10 minutes for their presentation.

#### UNITE HERE ONTARIO COUNCIL, LOCAL 75

**The Chair:** The next presenter will be Mr Paul Clifford, president-administrator of UNITE HERE Ontario Council, Local 75. Thank you for taking the time to come and address the committee. You can proceed. As you are aware, you have 15 minutes, of which you can take the whole 15 minutes or leave some time at the end for questions.

**Mr Paul Clifford:** Thank you for inviting me to deputé. Maybe I could start at the beginning with a couple of questions. I didn’t produce a written statement because I wanted to get some clarification on two aspects of the bill.

1610

The first one is, it’s my understanding from reading the bill that there’s no distinction made between the kinds

of licensed establishments. I think we normally would think about it in terms of impacting free-standing restaurants, but in terms of hotels, room service, banquet halls—my understanding is that it covers any licensed establishment, not just a restaurant. Is that true? Could somebody help me with that?

**Mr McMeekin:** There will be a separate adjunct licence that will be required. That will obviously be part of the regulations. We don’t want to proceed with something that is by definition nonsensical. The spirit of the legislation and the regulations will be very much one of keeping control and ensuring that there aren’t abuses of alcohol.

**Mr Clifford:** It matters to us. Maybe farther on down the road we could talk a little bit about it, because we have members not only in free-standing restaurants but also in hotels. Obviously, how this is applied to in-room dining or banquet facilities or whatever else would have some additional concerns for us.

The second one: The previous speaker talked about the corkage fee, but I didn’t see anything in the legislation itself that addresses a service charge or a corkage fee. I did want to make some remarks about that, but I didn’t understand how it would or could work.

**Mr McMeekin:** As I understand it, we’ve had a fair bit of discussion about it. Any corkage fee would be an independent business decision, something the proprietor would look at. As you may know, the whole program is voluntary. In Alberta, apparently only about 6% of licensed establishments actually took up the possibility of doing this bring-your-own-wine, a very small take-up rate.

**Mr Clifford:** Thank you for the clarification. I think I’ll pursue that second one. In my reading of the materials, one of the glaring omissions was that there was no real mention of the impact on the workers in the industry, the people providing the service. We’re talking about literally tens of thousands of people employed in the industry who actually provide the service and who are really the front line in terms of—you know, there aren’t enough police or law enforcement people to enforce this and make sure it works in a way that’s responsible, in the way the previous speaker talked about. I want to highlight that and give you some perspective on how I believe this will impact servers and the workers who have to work under this.

Just by way of background, my local is 8,500 workers, and we’re part of a union of 20,000 across Ontario. In the hospitality part of our union, probably about a third of our members are what we would call front-of-the-house. I have to tell you honestly that I have not run into a member in this line of work who supports the legislation as a worker. I think the areas of concern fall into two: One is the concern about the increased difficulty in standing up to customers who might say they want more, so it’s the area of public safety, and the second is the actual impact on their pocketbook.

On both of them, one of the things you need to remember is that we have a saying in our industry that



when you're a hospitality worker, you have two bosses: You have your employer, but you also have the customer. The reason is that they both provide you the income to maintain your livelihood.

In terms of the bring-your-own-wine impact on safety, the server, as the previous speaker said, is in a more vulnerable position. In a way, they actually have to stand up to their boss, to somebody providing their livelihood, and cut them off. It's more difficult to do that when the customer has brought in the wine and said, "This is my wine and I want more." The server, who depends on that customer for a tip, has to say, "No. You're cut off. No more." It makes it very, very difficult for workers providing the service to say no under this regime.

The second concern is an economic one. Liquor servers make less money per hour than other workers. Why? Because it's expected that they get a gratuity. In the province, the minimum wage for liquor servers who are also food servers is \$6.20 an hour. Working full-time, 40 hours a week—which very few people do—if you just look at the wage component, that brings somebody to about \$13,000 a year. That's not enough for an individual to live on, let alone support a family. The government has raised that recently but is potentially taking away the income from wine service under this situation. If I serve 10 bottles of wine at \$30 a bottle and I get 15% of that in a shift, that's 45 bucks I could lose if there's no guaranteed service charge or no guaranteed corkage fee attached to the service of that wine bottle. We could potentially see a significant loss of income to the people providing the service.

I said before that I haven't found anyone who supports it. On the other hand, if this is going forward, I would make two strong recommendations: One is that there be a mandatory service charge or corkage fee, and second, that should be the property of the worker providing the service. That takes them out of being vulnerable to the pressures of the customer on the one hand, and on the other hand it offsets the loss of income from the gratuity you would get on the price of the wine being served. It provides some relief for the reduction of their income and provides them some security in terms of enforcing the law.

Those would be my strong suggestions, if this is destined to go forward, that there be those two changes made to the bill. I don't know if it would be in this, how you would locate it or construct those changes, but those would be my strong suggestions.

**The Chair:** Thank you. We have enough time for two questions; three minutes left. I'll go to Ms Churley from the NDP.

**Ms Churley:** Thank you very much for your presentation. Have you had a chance to look at what has happened in Montreal and other jurisdictions that have had this in place for a while, in terms of your concerns?

**Mr Clifford:** I haven't looked at the other jurisdictions, no.

**Ms Churley:** I think your recommendations are sensible. Particularly, we're all aware of what happened to workers in the hospitality field during SARS, which

they've never really fully recovered from, and the minimum wage is so low.

I have a great concern about this as well. I'm not sure why the government—perhaps it will come up—is not making a corkage fee mandatory. I understand it's going to be voluntary. I don't know the pros and cons of that, why some choose to do it and others don't, but I'd be interested to hear what the government has to say.

I would support your recommendations. I'm just not sure how it works in other jurisdictions. I don't know if studies have been done on that, if the workers, for instance, in Montreal or Alberta or other places where they have this—if those kinds of suggestions you're making are in place.

**Mr Clifford:** I'd be happy to do some research. I do know—

**Ms Churley:** The government can do that; they've got the money and the resources.

1620

**Mr Clifford:** I'm familiar with—this is going back a little while, but I believe the state of Illinois at one point had legislation that said a service charge was the property of the worker providing the service. I think that's appropriate.

**The Chair:** From the government side, Mr McMeekin.

**Mr McMeekin:** Just a quick comment. Rod Seiling spoke on behalf of his association the other day, and because this issue came up then as well, he suggested that there would obviously—he said "obviously"; it was his word—need to be some discussion between management and the workers around how a percentage of the corkage fee would be built in to replace potential lost tips. He seemed to have that pretty well thought out, as I recall.

**Mr Clifford:** Well, for example, at the Sheraton Centre hotel, if there's a bottle brought in, there is a guaranteed corkage assigned to it and a formula for distributing it to the workers involved in the service of it. We're union, so we'd negotiate it where we have members, but if that can be extended across the province for everybody in the sector, I have no objection to that.

**Mr McMeekin:** That was exactly the type of thing that Mr Seiling was talking about. He indicated that, particularly in the context of working with unions, the formula would have to be something that is negotiated.

**Mr Clifford:** The problem is that the unionization rate, particularly in the restaurant industry, is very, very low. That was part of the reason I was asking about what kind of establishment is contemplated being covered by this. I would be happy to work on this with Mr Seiling or Mr Mundell or anyone else.

**The Chair:** Thank you very much. I just want to clarify one point about your concern. A customer cannot go into a restaurant and bring his own bottle if he is not taking a full-course meal, so there is still a gratuity coming in from the meal. Patrons of bars and taverns will not be allowed to bring their own wines.

**Mr Clifford:** Just to clarify, was that an option, or was it that "participating restaurants would have the discretion to require minimum food orders"?



**The Chair:** Yes, restaurants.

**Mr Clifford:** "Would have the discretion to require minimum food orders."

**The Chair:** Minimum food orders: You've got it there.

**Mr Clifford:** They "would have the discretion to require minimum food orders." It's in the question and answer.

**Mr McMeekin:** I would suggest respectfully, Mr Chairman, that any restaurant that isn't going to have a minimum food order and is going to let somebody bring wine in without a corkage fee isn't going to be in business very long.

**Mr Clifford:** Yeah.

**The Chair:** Our time is up, Mr Clifford. Thank you very much for taking the time and bringing up your concern.

#### ONTARIO RESTAURANT HOTEL AND MOTEL ASSOCIATION

**The Chair:** Our next presenters will be Terry Mundell, Tony Elenis and Michelle Saunders, with the Ontario Restaurant Hotel and Motel Association. Welcome to the committee. We appreciate the time you're taking to make your presentation. You can proceed. You heard the time you have—15 minutes—of which you can take the whole 15 minutes or leave some time at the end for questions.

**Mr Terry Mundell:** Thank you very much, Mr Chairman and members of the committee, for this opportunity to speak with you today. My name is Terry Mundell and I'm the president and CEO of the Ontario Restaurant Hotel and Motel Association. With me is my colleague Michelle Saunders. It's my pleasure to have the opportunity to speak with you this afternoon regarding Bill 96, An Act to amend the Liquor Licence Act.

The Ontario Restaurant Hotel and Motel Association is a non-profit industry association that represents the foodservice and accommodation industries in Ontario. With over 4,100 members province-wide, representing more than 11,000 establishments, the ORHMA is the largest provincial hospitality industry association in Canada. Ontario's hospitality industry comprises more than 3,000 accommodation properties and 22,000 foodservice establishments, 17,000 of those which are licensed to serve alcohol in Ontario.

Bring-your-own-wine has been a challenging issue for our industry, with some strong supporters and some adamant opposition, as well as differing opinions about appropriate implementation models and risk-management strategies. But there is some general consensus on bring-your-own-wine and take-home-the-rest. A survey of our members province-wide revealed that the majority of our members do not intend to offer either of these services to their clientele. Our members strongly indicated their belief that neither bring-your-own-wine nor take-home-the-rest will result in increased sales and that both policies will result in increased liability insurance rates.

Although many of our members have a variety of concerns regarding bring-your-own-wine, the association does support the government's proposal to make this enabling legislation, to permit operators the opportunity to choose the services that best serve their establishment and their clientele.

The ORHMA does continue to have concerns with the impact bring-your-own-wine will have on operator liability and liability insurance costs. As the ORHMA also has some concerns with the government's proposal to allow patrons to take home partially consumed bottles of wine and as the ORHMA expects that many of our concerns will be addressed in regulation, we urge the government to consult with the industry when developing regulations, regulations that will clarify an operator's obligations and mitigate their liability.

For example, rather than simply requiring the licensee to recork a partially consumed bottle of wine, the government may compel operators to place a seal over the recorked bottle or to place the recorked bottle in a sealed bag similar to those used by courier companies.

While the ORHMA understands that it's the government's intention to allow only commercially produced wines and to prohibit homemade wines, the association respectfully suggests that consideration be given to perhaps a marking system so licensees can clearly identify appropriate bottles.

The ORHMA also recommends that corkage fees not be regulated.

The ORHMA also suggests that the government design and implement a formal education and training process so that licensees, servers, consumers, alcohol inspectors and the broader enforcement community have a clear and common understanding of their obligations, responsibilities and rights under the Liquor Licence Act.

This bill, however, is about more than bring-your-own-wine and take-home-the-rest. It also includes three other amendments to the Liquor Licence Act. I will briefly address each of these three amendments.

First, the bill proposes to give the registrar of the Alcohol and Gaming Commission the power to issue immediate interim suspensions of licences when it is deemed in the public interest.

The safety of our patrons, responsible service and community safety are vital concerns to our operators. The ORHMA recommends clarity in the wording of the legislation to define the types of circumstances and conditions that would lead to or permit the registrar to issue an interim suspension, such as an immediate risk to community and individual safety.

The ORHMA also recommends that the AGCO be required, when requested by a licensee under this provision, to hold a hearing within 48 hours to determine if that interim suspension should continue.

The association also recommends that operators not be held responsible for incidents that happen outside of their establishments.

Second, the ORHMA has no concerns with the amendment to create an offence for failing to leave a



licensed premises when required by a police officer to do so or for returning the same day after being asked to leave, save and except when that person is the licensee.

Third, the bill also proposes to increase the minimum fines for licensees and non-licensees for the provision of alcohol to minors. This includes minors who consume alcohol.

The issue of underage drinking is a very serious concern for our industry, as the technology to produce fraudulent identification becomes more sophisticated and more readily accessible.

The ORHMA respectfully suggests that a small monetary fine is not a sufficient deterrent for our youth, and true and meaningful deterrents and consequences must be put in place. The ORHMA recommends that the government help mitigate operators' and servers' liability by clearly articulating steps an operator or server must undertake to fulfill their due diligence in preventing underage drinking. This will help move the yardstick forward on both the government's and the industry's efforts to prevent underage drinking.

However, beyond Bill 96, the ORHMA is more specifically concerned with the broader reforms to the Liquor Licence Act. Our association believes that broader reforms to the legislation are necessary to bring about real and meaningful change to the licensing, enforcement and hearings process.

The ORHMA was pleased recently to have had the opportunity to meet with the Minister of Consumer and Business Services to present him with some specific recommendations for amendments. We understand that the government is considering introducing legislation next year that will bring about reforms to the industry.

1630

The ORHMA believes that a comprehensive review of the Liquor Licence Act is warranted immediately and looks to the government for their support in making broader reforms to the Liquor License Act that will bring about positive changes.

Our areas of concern include, but are not limited to: the disintegration of the relationship between licensees and the AGCO inspectors; inconsistencies in interpretation and inspection standards amongst inspectors; wholesale pricing; escalating costs; gallonage fees; and cross-subsidization of retail promotion and taxation policies, to name a few. These matters are significant, and the ORHMA urges the government to address them as soon as possible and to include the industry in those discussions.

Operators, sommeliers, bartenders and servers bring a wealth of experience to the table and respectfully request and deserve a voice. Members of the committee, thank you very much for your time.

**The Chair:** Thank you, Mr Mundell. I will proceed with questions. We have seven minutes left. I'll go to the government side. Mr Duguid.

**Mr Brad Duguid (Scarborough Centre):** Mr Mundell, good to see you again. You were talking about concerns about increased liability. Our information from

Alberta and Quebec, which have both bring-your-own-wine and take-home-the-rest policies, and British Columbia, which just has take-home-the-rest policies, is that they've seen no increased liability there at all. Do you have any other evidence of jurisdictions where there has been increased liability, or is Ontario somehow different from these jurisdictions and you think that the result would be different?

**Mr Mundell:** I think the broader concern for us at this point in time is that we've not been able to ascertain directly from those insurance companies that there will be no impact on liability. We understand what's happened in other jurisdictions; we've not been able to get direct correlation to Ontario on that.

**Mr Duguid:** Is it a serious concern of yours right now, or is it something that's—

**Mr Mundell:** Liability—I'm sorry.

**Mr Duguid:** I'm not really sure where the concern is coming from if, in practice in other jurisdictions, there hasn't been a problem there.

**Mr Mundell:** We've seen beverage alcohol liability insurance in our industry double, triple, quadruple for many of the operators in Ontario. It doesn't matter really where you are; it is anywhere in the province. You see fees that go from \$25,000 and \$35,000 a year to \$100,000 a year in an industry that has after-tax average profits of 5%. It's an uncontrollable cost which is a significant hit on the bottom line, so there's a huge concern about liability issues in general, period, in the industry. We're concerned that this may compound that.

**Mr Duguid:** OK. You talked about a marking system for bottles, and I'm just curious about what you meant by that and how you'd perceive that rolling out.

**Mr Mundell:** I think the key to any of these new types of programs is to make sure that they're easily understood by consumers, by servers, by licensees and by the enforcement community. Some sort of easily recognizable marking on a bottle which would be eligible to bring into an establishment that everybody understands, one system across Ontario that's easily identifiable, would, from an understanding perspective from all of those different parties, be a significant advancement.

**Mr Duguid:** I'm just trying to understand: It's a marking system for bottles that are being taken out, taken home? Is that what you're talking about?

**Mr Mundell:** You want to have a system to make sure, first of all, that the product that you allow in the establishment is LCBO-only type product, right?

**Mr Duguid:** Yes.

**Mr Mundell:** That's the issue. So for us what we don't want to have happen is somebody bring in a bottle of homemade which may have a higher alcohol content. So how do you put a system in place that has one marking scheme which identifies that product quite easily for consumer-licensee-server right across the board?

**Mr Duguid:** My understanding is that homemade will not be permitted, but your comments on the marking system—

**Mr Mundell:** We're really looking for something which is easily understood by all.



**Mr Duguid:** OK. Thanks very much.

**Mr Martiniuk:** I want to deal with the suspension of licence. At the present time, two members of the board, individuals who are appointed and are acting quasi-judicially, make the decision for the temporary suspension of a licence and then there's a full hearing of the board within 15 days. The intent of this statute is to change that, removing the two members and substituting the prosecutor or the registrar. He does the prosecution; now he's going to adjudicate and act quasi-judicially in hearing his own evidence that he's presenting—a rather peculiar situation to put a person in, but let's forget about that for a moment.

We were advised that the board, even if they meet within the 48 hours, which is part of your testimony, reserve judgment, sometimes for considerable lengths of time. I am concerned that the substitution of the registrar and the 15 days, with possible reserved judgments, would put many of your members in jeopardy. Would you like to comment on that? How have you directed your mind to that problem?

**Mr Mundell:** Thank you very much for the question. In fact, we are very concerned about that. That's why we've recommended that within 48 hours the licensee, at their discretion, have the opportunity to get a hearing to decide whether that interim suspension was warranted.

Your question also goes to a broader concern we have, which is the issue around the AGCO being both the judge and jury. Recently, this government, when looking at the securities commission—Management Board Chair Phillips talked about the issues around that group's ability to be both judge and jury and in fact looked at separating them. In terms of a formal review going down the road, we think the government needs to take a very serious look at that. The whole hearings process continues to be of considerable concern to us.

**Mr Martiniuk:** Thank you.

**The Chair:** Our time is up. I would like to thank you very much for taking the time to bring your concern to the attention of the committee.

The next group is the Kitchener Downtown Business Association, with Mr Marty Schreiter. Not here?

#### ONTARIO ASSOCIATION OF CHIEFS OF POLICE, ALCOHOL AND GAMING COMMITTEE

**The Chair:** The next group is the alcohol and gaming committee of the Ontario Association of Chiefs of Police, Mr Rob Shaw. Detective Inspector Shaw is the Chair. On behalf of the committee, welcome to our hearing. You probably heard the time you have, 15 minutes, all of which can be used by you, or you may leave some time at the end for questions. You can proceed.

**Mr Rob Shaw:** Mr Chair and members of the committee, thank you for the invitation to speak here.

My name is Rob Shaw. I'm a detective inspector with the Ontario Provincial Police. I'm currently assigned to the investigation and enforcement bureau of the Alcohol

and Gaming Commission of Ontario as the director of liquor enforcement. I'm here in my capacity as the Chair of the alcohol and gaming committee of the Ontario Association of Chiefs of Police.

One of the mandates of my committee is to study and evaluate legislation or proposed legislation pertaining to liquor laws. Our committee has reviewed the changes to the Liquor Licence Act proposed in Bill 96, and the following are our views regarding each of the changes proposed in Bill 96.

I'll speak first to giving the registrar the power to issue immediate interim suspensions of licences in the public interest. We support this change as an enhancement to public safety in licensed establishments. We would like to see this provision used in serious individual cases where there is a threat to public safety. We would also like to see it utilized when multiple notices to revoke a licence have been issued by the AGCO and it is clear that there is no further incentive for a licensee to comply.

For example, there are licensees who currently have multiple—as many as 10—notice of proposal to revoke their licence for infractions of the Liquor Licence Act and regulations. They keep delaying the hearings process. Knowing they are eventually likely to lose their licence, there is no incentive for them to operate in compliance. While they delay the hearings, they continue to operate in the manner that is most profitable to them, with virtually complete disregard for the law. An interim suspension would remedy this situation and force a hearing within 15 days.

Second, amending sections 34 and 34.1 of the Liquor Licence Act to prohibit persons who have been required to leave a licensed premises by a police officer from remaining on the premises and from returning to the premises until the following day, unless authorized by a police officer: We support this amendment insofar as it goes. It will be a useful tool for police, but it does not include an arrest authority. For example, if a bar patron refuses to leave when ordered by police or returns the same day, they can be issued an offence notice under this new section. However, they cannot be arrested and removed from the bar under the authority of these sections unless they fail to identify themselves. An arrest authority for non-compliance would enhance the intended purpose of the sections.

Thirdly, doubling the minimum fines related to underage drinking: We support this change as a positive move in combatting underage drinking. We fully support that.

#### 1640

Fourth, permitting patrons of licensed premises to bring their own wine and take home the rest: We have no objection, in principle, to allowing patrons to bring their own wine to a licensed establishment that has a bring-your-own-wine endorsement added to their licence.

Our committee did have concerns about how this legislation would be crafted, not having seen a draft of the regulations. The licensee needs to retain responsibility for service, and thereby over service and service to minors, of bring-your-own-wine in the same manner as



any other liquor they serve on the premises. It's recommended that patrons would have to surrender custody of the wine to the licensee, who would uncork and serve the wine and retain the obligation and right to refuse service to an intoxicated patron.

If patrons are to be permitted to take home the rest, the bottles must be resealed in such a manner that once they're outside the premise, the resealed bottle is readily identifiable as such and cannot be opened by hand. This is required so that a patron leaving with a resealed bottle cannot be confused with someone walking down the street with an open bottle or driving with an open part-bottle of liquor.

Concerns were raised regarding potential cases where a patron has brought their wine and then been cut off because they've become intoxicated. Does the licensee give them the remaining wine to depart with? Would that not be serving an intoxicated patron? While probably not a common occurrence, it does put a licensee in a difficult position without clear direction. It is suggested that the legislation address this issue by including that intoxicated patrons will not be permitted to remove the remaining wine from the premises and the licensee may dispose of it.

We have had discussions with the office of the Minister of Consumer and Business Services and believe the regulations will address the concerns raised by our committee. The committee would like the opportunity to review and provide comments on the draft regulations when available.

In summary, the Association of Chiefs of Police supports the provisions within Bill 96 that empower the registrar to issue interim suspensions, increase police powers to deal with public order issues in licensed establishments, and double minimum fines for minor related offences. We believe all of these measures will assist in enhancing public safety. The bring-your-own-wine provision has raised some concerns. We believe that if these concerns are addressed with appropriate regulations, there will be no impact on public safety or policing resources.

We understand that Bill 96 is the first phase of Liquor Licence Act reform. Our committee is reviewing the Liquor Licence Act and will be making recommendations for further reforms as part of the next phase. Some of our areas of interest are: making a liquor licence a privilege rather than a right, thereby placing the responsibility on applicants to prove they should have a licence rather than the reverse; developing a thorough application process, with increased local input, to more appropriately assess risk, including a full due diligence investigation if required, prior to the issuance of a licence; eliminating minor regulatory infractions that draw enforcement resources away from public safety issues, for example regulating inducements and pricing; and expanding the current definition of "intoxicated in a public place" or creating a new section to empower police to deal with persons causing a disturbance due to consumption of alcohol, short of making a criminal arrest.

We look forward to further consultations as LLA reform progresses. I'd like to thank the committee members for the opportunity to appear today and express the views of the Ontario Association of Chiefs of Police. I'd be pleased to answer any questions you have.

**The Chair:** We have approximately eight minutes left, so it will be divided with approximately two and a half minutes per caucus. I will go to the official opposition side.

**Mr Martiniuk:** Thank you very much for your representations here today. I am somewhat confused, however. Let's deal with item 1 of your presentation. As I understand the law as it presently stands, two board members can make the decision to suspend the licence under the present legislation. All this legislation does is substitute the registrar, rather than the two board members, to make that decision. There hasn't been any change in rights: additional rights given or rights taken away. All we have done is taken the two board members and substituted the registrar. You seem to think that's a radical change. I'd like you to explain to me why it will assist chiefs of police.

**Mr Shaw:** Currently, sir, the requirement is for two board members to hear the interim suspension. So when we have a serious case where there's a threat to public safety—and typically those issues have been severe violence or open drug dealing or those types of issues in bars—we have to find two board members who are available to sit and hear it and organize that hearing before them, and then we have to find two additional board members who are available within 15 days to have a second hearing. Frequently, we don't have that ability. It is the process of trying to make that happen—

**Mr Martiniuk:** OK. You got me to start with, because the 15 days has to take place, as I understand it, under the statute, and there's no change. It still has to take place under the new amendments. All that has changed is that rather than finding the registrar—you used to have to find two board members, and that has led to difficulties, in your personal experience?

**Mr Shaw:** Yes, it has. It has also led to difficulties in putting a case together within that time, where the registrar has the authority—a police officer could swear to an information in front of the registrar, and it's a more expedited process than pulling together a hearing with two board members. They still have the same right that within 15 days there is a full hearing. It would simply make the process work, in our experience, much faster and enhance our ability to provide public safety.

**Mr Martiniuk:** Thank you, sir.

**The Chair:** Ms Churley?

**Ms Churley:** Thank you very much for your presentation. I wholeheartedly agree with some of your recommendations in terms of community safety and community issues on page 4. They're very good recommendations.

I wanted to come back briefly to page 2, where you say you have no objection to the BYOW but that you have some concerns about how the legislation would be crafted. Do you have specific recommendations to the

government in terms of how it should be crafted? There's a lot of talk about regulations, and I just wonder if you have any suggestions.

**Mr Shaw:** As I provided in the written submission, our suggestion would be that when an endorsement is issued on a licence, if a patron brings their own wine, on entering the restaurant they should turn custody of that wine over to the serving staff and should be served by the staff, not keep it with them.

**Ms Churley:** Beyond that, you're pretty comfortable with it otherwise, but you'd like to see what the other—

**Mr Shaw:** Yes, we would like to see the regulations. My understanding is that our concerns will be addressed. We just haven't seen the draft regulation.

**Ms Churley:** The other thing is that I'm interested in what you said in C on page 4, that if somebody is intoxicated, they should not be allowed to take their wine with them. One of the things I've often thought is that even as it is now, when you buy wine on the premises, you will see—and I've been guilty of this, though not while driving. I've been guilty at times of buying a good bottle of wine in a restaurant and maybe having that extra glass because it's a good bottle of wine and I can't take it with me. I have to either drink it there or not drink it at all. I would like to see a situation where, to avoid that, any bottle of wine can be recorked properly, not just bring-your-own but bottles on the premises. If you spend \$50 or \$100 or whatever on a bottle of wine, there won't be that temptation to drink it up because you can't take it with you. Do you have a comment on that?

**Mr Shaw:** On the first portion, I would comment that it's currently an offence to sell liquor to an intoxicated person, whether that's a full bottle or a glass. The concern that was raised was that if they become intoxicated and they have additional wine they've brought with them—if we wouldn't sell them additional liquor, why would we give them their wine to take home? That's why our recommendation was that if they do become intoxicated, the licensee has the right to withhold it and not give it to them to leave with. Second, you're talking about take-home-the-rest in any circumstance, much like Alberta or BC. All I can say on that is that, having contacted Alberta and BC in our deliberations on this, they have no problem with that system. They allow any licensee to take home the rest.

**Ms Churley:** Whether it's served from the premise or bring-your-own, it's recorked properly and they can bring it home, whatever is unfinished?

**Mr Shaw:** Yes.

**Ms Churley:** Is that part of this legislation?

**Mr Shaw:** I don't believe it is; it's only those with endorsements.

**Ms Churley:** That's what I thought too. That's something we should take a look at.

**The Chair:** Thank you, Ms Churley. I'll go to the government side. Ms Matthews?

**Ms Matthews:** I'm asking my colleague if he wants to clarify that take-home-the-rest question.

**Mr Shaw:** I think the confusion was that in this legislation, my understanding is that you can only take home

the rest in those places that have a bring-your-own-wine endorsement, unlike BC and Alberta.

1650

**Mr McMeekin:** Yes, that's correct, and it applies to both wine that you bring in or wine that you purchase there.

The other comments you made, particularly about the person being intoxicated, I think we need to look at that. I know the minister is very aware of it and he appreciates very much your input on that.

**The Chair:** Sorry, Ms Churley, I was looking at the time when you asked that question and I didn't hear it properly.

**Ms Churley:** No, I understand.

**The Chair:** Ms Matthews.

**Ms Matthews:** I just want to explore something, your point number 2, that it's not currently an offence to not leave when you've been asked to leave a restaurant or bar. Is that right?

**Mr Shaw:** It is an offence; it's not an arrestable offence. Currently, under the Liquor Licence Act, the only two arrestable offences are being intoxicated in a public place or any offence in failing to identify yourself with that. So, in effect, if you order someone to leave, which is your authority as a police officer, and they refuse to, this section is saying that you can issue them an offence notice for it and you can charge them.

**Ms Matthews:** And the proprietor can't order somebody out?

**Mr Shaw:** The proprietor can, yes. And if they fail to leave, that would be trespassing; it's a separate section.

**Ms Matthews:** I see. But a police officer can't order them to.

**Mr Shaw:** He's not an agent unless he's acting as an agent of the owner.

**Ms Matthews:** OK. Thank you very much.

**Mr McMeekin:** Just for clarification, there will be an endorsement required to bring your own wine. There will not be an endorsement required to take it home. In fact, restaurants will have that choice. That's good news, because it addresses very specifically the concern you have about an intoxicated patron. The restaurant, as a matter of policy, could say, "We're not going to allow them to take home the rest."

**Mr Shaw:** Thank you.

**The Chair:** Thank you, Mr Shaw. I would encourage you, if you have any amendments to send to the committee, you have to do it by 4 o'clock tomorrow afternoon. I can see that you have some concerns, so we would appreciate it very much.

SPADINA/QUEEN/PETER/RICHMOND  
COMMUNITY ASSOCIATION

KING-SPADINA  
RESIDENTS' ASSOCIATION

**The Chair:** Now I would ask if anyone is here from the Kitchener Downtown Business Association. Have



they arrived yet? If not, I would call on the next group, the Spadina/Queen/Peter/Richmond Community Association and King-Spadina Residents' Association. There are four of you, so I will ask that before you speak, if you could identify yourself for our record purposes. Thank you, and on behalf of the committee, welcome to the public hearing.

**Ms Liz Sauter:** I'm Liz Sauter from the Spadina/Queen/Peter/Richmond Community Association.

**Mr Wayne Scott:** My name is Wayne Scott, and I'll be presenting our primary presentation this afternoon on behalf of the group.

**Ms Rose Bayer:** I'm Rose Bayer, one of the representatives of the King-Spadina Residents' Association.

**Mr Don Rodbard:** I'm Donald Rodbard, one of the founders and a director of the King-Spadina Residents' Association.

**The Chair:** Thank you. You can proceed.

**Mr Scott:** We certainly appreciate the opportunity to present our views on Bill 96 to the committee. The bill deals, in a small way, with matters that we find very concerning.

Our associations directly represent residents, as opposed to hotel owners, restaurant owners and other players in the hospitality industry, in the entertainment district of downtown Toronto. This population currently numbers in the thousands and is growing quickly. In addition, we indirectly represent many thousands of other residents with an interest in positive change to the Liquor Licence Act who cannot be here today.

You see the names of the associations we represent. The King-Spadina Residents' Association is a voluntary association of existing neighbourhood associations, condominium communities and individual residents in and around the area covered by the city of Toronto King-Spadina official plan.

Also with us today is the Spadina/Queen/Peter/Richmond Community Association, a voluntary association of residents as well as retailers and businesses in that block in the city.

Both organizations care about the evolving urban neighbourhood and we want to make sure it remains a safe and vibrant place to live. Together, we represent the voice of mixed development, as planned and encouraged by the city. The chart below, which I will not read, gives you some idea of the range of participants in this community who are represented by the associations here today.

Next, I'd like to speak to the perspective that we bring to our presentation. The vast majority of input that we've heard deals with restaurants and, in some cases, hotels. We actually bring a very different perspective, and that is the perspective of residents and the impact of nightclubs as licensed facilities on the neighbourhood.

In our case in particular, we deal with a number of issues that stem from an unprecedented concentration of nightclubs in the King-Spadina area. I say "unprecedented"; it's certainly unprecedented in the city of Toronto, and I believe unprecedented across Canada and

perhaps beyond. Some of these facilities operate only as nightclubs, typically opening on weekends—Thursday, Friday and Saturday, perhaps. Others operate as casual restaurants during the week and adjust their operations to attract club patrons on the weekend. In all cases, these operations are characterized by an emphasis on alcoholic beverage service, on dim lighting and excessively loud music. We describe these licensed facilities generally as high-impact entertainment facilities.

In the King-Spadina area there are more than 80 such nightclubs and club-like facilities approved and operating in an area of approximately one square kilometre. Since licence information is not readily available to the public, we don't have an accurate total of the occupancy approved for these establishments. However, estimates put the total at in excess of 20,000 patrons. Police estimate that the area attracts between 20,000 and 30,000 visitors on club nights, and this is in an area that's approximately one square kilometre. As you can appreciate, the impact of this concentration of establishments dedicated to drinking and dancing is significant and often, by their own report, overwhelms the ability of the police to maintain order in our neighbourhood.

The next point I'd like to make is that there is no distinction under the Liquor Licence Act between a restaurant and a nightclub. The licence application process for a restaurant and for a nightclub with a capacity of up to 3,000 patrons—and there is one with that capacity in our neighbourhood—is exactly the same. The licence obtained to operate a traditional restaurant offering full table service at lunch and dinner can subsequently be used, with no review or amendment, to operate a full-blown nightclub in the same premises. The occupancy calculation, at least in the city of Toronto, is the same for both kinds of use and requires only six square feet of licensed space per occupant.

It's our view that both the approval process and enforcement of the act require change. That we have this level of nightclub concentration in one urban neighbourhood is evidence by itself that the approval process is flawed. While the overall business approval is the responsibility shared by both the Alcohol and Gaming Commission of Ontario and the local municipality, the AGCO has a unique and critically important role at the licence approval stage. Bill 96 does not address the approval process. For the information of this committee we have attached appendix 1 to this submission, highlighting several important changes that we believe must be made to the process of approving licences under the Liquor Licence Act. I do not intend to read appendix 1, but I encourage members of the committee to read that.

Similarly, enforcement is a responsibility shared by the AGCO enforcement branch—we've just heard from the head of that branch—and the local police force. Neither agency has the resources necessary to adequately enforce the number of nightclubs currently licensed in the King-Spadina area. In addition, they face important constraints and limitations under the current laws, regulations and standard practices of both the AGCO and



the courts. Mr Shaw referred to a couple of those. Bill 96 does address two important aspects of enforcement. This is a positive step, in our view, but only a small step compared to the need.

Let me turn to the proposals contained in Bill 96 itself, and these are in the order in which they appear in the bill.

First, the BYO amendment: As restaurant patrons we have no objection to this BYO amendment as an additional option for both restaurant owners and patrons in the enjoyment of wine and food together. However, we have very serious reservations about extending this provision to nightclubs. The current act and regulations prohibit happy hour pricing of alcohol as a means to attract customers, presumably because it encourages excessive alcohol consumption. We heard from the representative of MADD earlier that there's strong research that establishes that correlation. However, our concern is that nightclubs could use this new provision, bring-your-own-wine, as a new happy hour and with the same effect. Since the current act does not distinguish between restaurants, which receive a substantial portion of their revenue from food service, and clubs, which get almost all revenue from beverage service plus cover charges, we believe that additional changes will be required in the act and regulations to ensure that this abuse does not happen. We strongly encourage the government to consider and include such changes.

#### 1700

The second change, the interim suspension of licence, which has received some discussion here this afternoon: We strongly support this change as an appropriate provision to deal with the issue of public safety on a timely basis, and also to deal with other serious issues that we experience on an ongoing basis in our area, in the public interest.

Sections 34 and 34.1, the requirement not to remain after being required to leave, and no re-entry until the next day: Again, we strongly support these changes as giving police a clearer basis for enforcement. The resources of both the AGCO enforcement branch and the Toronto Police Service are stretched by the concentration of clubs in our area, and this would assist their activity.

In 52 division of the Toronto Police Service, which includes the entertainment district, personal assaults have increased in 2004 over 2003. This is an environment in Toronto overall in which personal assaults have declined in the same period. Reasonable and balanced changes such as these will enable police officers to address assaults and other violations more effectively.

Section 34.1 is the same, and we support it for the same reasons.

Section 61: A minimum fine increase for serving minors—patrons under 19 years of age. In our opinion, the fines levied for offences under the Liquor Licence Act generally are not large enough to be a deterrent to nightclub owners, especially those operating large clubs. We strongly support this change and ask the government to go further by implementing a schedule of minimum

fines that increase with the licensed capacity of the establishment.

We recommend that the proposed minimum fine apply to a licensee with occupancy of up to 99 patrons—that's the proposed fine of \$1,000—and that the minimum fine be increased by \$1,000 for each 100 patrons allowed under the licence. This provision would protect small-restaurant owners but would apply a fine proportionate to the offence for large-club operators and make that fine material.

You see before you an illustration of such a schedule that might be extended and apply truly meaningful fines to operators who make tens of thousands of dollars of profit each night of operation.

On the other hand, we see no particular reason to try and apply heavy-handed and punitive fines to individuals, and so we support the second part of this provision for fine increases, as proposed.

Once again, we appreciate the opportunity to present our views to this community, and we'd be prepared to answer any questions you may have.

**The Chair:** We have exactly four minutes left, and we'll go to two parties, two minutes each.

**Ms Churley:** Thank you very much for your very thorough presentation. You clearly have done your homework on this. It's good to hear the perspective from residents, because mostly we've heard from interest groups.

I'm just trying to understand your position on this. There seems to be a lot of focus on bring-your-own-bottle, although there are other aspects to this which you spoke about more.

As you read the legislation that exists right now, there are regulations to come that this could be extended to or is already—it's just my own ignorance here in terms of this—to nightclubs as well as restaurants. It was my understanding that it only applies to restaurants and that there has to be food involved with this bring-your-own.

**Mr Scott:** Certainly we have not seen any draft regulation, and our position right now, as best we understand it, is that there is no distinction under the Liquor Licence Act between restaurants and clubs. There is a requirement for clubs to be able to serve food if that is ordered by the patrons, but there is no requirement to serve food.

**Ms Churley:** There's discretion. The way it's written, it's to the discretion on the part of the patron.

**Mr Scott:** Yes. So our concern is, if the bring-your-own-bottle provision is not clearly identified with restaurants as opposed to all licensed establishments, it could be abused. Under the current legislation and regulations, we see no discernible differentiation between nightclub operators and restaurants. So that's the basis for our concern about this provision.

**Ms Churley:** Very quickly, on page 3 you talk about, "Neither agency has the resources necessary to adequately enforce...." Can you expand a bit on that, on what's going on? Are you not getting return calls or people aren't getting there in time or what?

**Mr Scott:** Well, all of the above. Let me illustrate this by statements made by Chief Fantino in a public meeting



in early October. This was to a meeting of the Toronto Entertainment District Association, comprised of business owners in the entertainment district. We were all invited as guests of that association. Chief Fantino said that on club nights the entertainment district becomes the nerve centre for police enforcement across the Toronto area, and that there is a disproportionate number of police officers brought in because of the requirement for enforcement. Nevertheless, one of the things we experience as residents is noise, and response to noise complaints is essentially nonexistent because the resources are not available. The police informally, individual officers on the street and their supervisors, have told us they cannot consistently enforce the law in this area. So we have Chief Fantino on the record, and many officers who work in this area off the record confirming that it's a real challenge for them.

**The Chair:** Thank you, Ms Churley. I have time for one question. Mr Duguid?

**Mr Duguid:** Just quickly, given there's not a lot of time, I wanted to go into your concerns about the bring-your-own-wine and nightclub issue, because I'm trying to figure out how it would be in the interest of a nightclub to allow somebody to bring their own wine in when they don't serve any food or anything like that? It's like, "Just come in, use my establishment for free and leave with your wine." It has to be served, it has to be poured by a server, so it's not like they could walk around with their bottle of wine in their hand or anything like that. I'm just trying to see where you're coming from on this.

**Mr Scott:** Quite apart from the reality of operation in a nightclub—I don't know how long it's been since you've been in some of these large facilities—

**Mr Duguid:** No comment.

**Mr Scott:** The club operators, although there are lots of them there, are actually in a very competitive business. They use every opportunity they can to create an advantage, to create volume, especially on the less busy nights such as Thursday. I can imagine a bring-your-own-wine night. Included in the cover charge is corkage, and it gets the patrons in the door, so it's that kind of scenario. They're prepared to make the trade-off between losing the sale of some wine with patrons in the door consuming alcohol after they've finished the wine. That's our concern.

**Mr Duguid:** So your concern is about when they leave with the half-empty bottle, that they'll be consuming it outside? I'm trying to think of what the downside is to it. They're going to consume regardless of whether they buy it there or whether they bring their own.

**Mr Scott:** Should there be any circumstance in which a club patron actually takes a partial bottle out of one of these clubs, then I would be concerned about them re-opening it, because we see the consumption of beer in the parking lots after the club closes, on a regular basis, and we see broken bottles in the neighbourhood. The club patrons are not universally bad people, but after a couple of hours in an intense environment of sound and lots of

alcohol, they have less regard for the law than we would like for most of our citizens.

**Mr Duguid:** I thank you for your comments. I know your neighbourhood can be very challenging sometimes with regard to this. Thank you for the good work you do there to make sure you bring it to the authorities' attention when it needs to happen.

**The Chair:** Our time is up. Thank you for taking the time. Our next presenter will be Petit Dejeuner, Johan Maes. Just before we start with this presentation, I made a mistake I have to correct. The deadline is really tomorrow at 4 o'clock for amendments, but it applies to members only, not individuals who want to submit an amendment.

1710

#### PETIT DEJEUNER

**The Chair:** Mr Maes, thank you for taking the time. You have a total of 10 minutes. You could take the whole 10 minutes or leave some time to the members for questions.

**Mr Johan Maes:** Thank you very much. I would like to thank you for the opportunity to state my interest in this room regarding Bill 96. I have a restaurant that just acquired a liquor licence six months ago. I also have a catering company that serves a fairly large amount of alcohol to weddings etc. I believe it would be a good thing to sort of allow that to be left to our discretion as to when and how—you know, to the business we have.

I think it's a positive movement because customers will maybe increase their knowledge a little bit more about what they drink and what they match it with and will maybe become more responsible that way. I think it's also a good thing for restaurants to minimize their inventory, especially for new businesses, including myself, that have a hard time setting up—renovations and the cost of having a liquor licence is fairly large—and therefore to have a longer time to build up a better inventory.

I'm not sure if I'm correct in understanding this, but are we also allowed to dictate when the BYOW is presented? I could, for example, decide no on Saturday. Is that correct?

**Mr Lou Rinaldi (Northumberland):** Whatever you want.

**Mr Maes:** I think it's a good thing also for tourism in Ontario. Being from Europe, I think we really enjoy going to restaurants and bringing our own bottle, because I can show my friends my interests. I can go out for a smaller amount of money and therefore enjoy my time more and more often.

Also, being an owner, I believe it's fairly hard. We have to implement this with caution, I think, because of the liquor licence security act. It was mentioned a few times before. Take home the rest: When do I decide when a customer is over the limit, and how do I tell this customer, "Here's the rest of your bottle of wine. Take it into the taxi and you can open it there, if you like,



yourself"? I don't know. Is that going to happen? If I tell somebody, "You've had enough," which happens not often but has happened in my establishment, for sure, can I tell him he's not allowed to take the bottle? Is this the sort of legislation that I have to—once I offer to take home the rest, do I always have to give it that way? That would be my larger concern.

The corkage fee: My suggestion would be—for our place, if that's possible—to try and sort of give a fee per person. If you're a group of four people and you want to go out to a restaurant, you will spend more money than a group of one. A lot of people in my neighbourhood, King and Jarvis, come for dinner by themselves. I don't believe they should be paying as much as a table of four, who then should not be benefiting from the contrary, which makes it almost as affordable to me to do BYOW or to actually just buy the bottle and then a service charge on top, and pay a liquor tax on top of that. You know, \$3.50 a glass would give me \$22 per bottle, and a markup for a reasonable bottle is—I'm not too greedy—almost the same, sometimes a little less, sometimes a little more. But I don't think it's a horrible thing for restaurants, anyhow.

I also think customers would have to be coached on the importance of the waiters. I believe that's a big issue: their not being able to make the same amount of tips, or at least having a huge concern about that. If there is any way—who is going to do this coaching? Is it something the government will inform the public about? So whoever serves you that night, if you bring your own bottle, isn't going to make as much money. Their minimum wage is \$6.20, as was said before. They serve, on average, maybe 10 tables, 30 people at once, and then they go home with absolutely very little money, which means that I, as an owner, am going to have a much harder time finding good staff. The staff are out there, and they're very willing to work, but they also have the opportunity to do a second education and do something else to fill up their time.

I also think that we, like the restaurants that participate in this, might also build up a crowd of customers who are not always so—they don't spend a lot of money, let's say. I hope they will now drink some wine. I don't know how that's going to work out in the end.

Lastly, I guess it's just to make sure that we, as owners, and also the staff, get the appropriate training to—like Smart Serve; is that going to be updated? Will we kind of know about it? Is it something that the restaurants will be informed about?

That's pretty much my presentation.

**The Chair:** Thank you, Mr Maes. We have four minutes left, which would give two minutes for the government side and the official opposition. Mr Rinaldi?

**Mr Rinaldi:** Thank you very much for coming here today. Just for the record, is your facility here in Toronto?

**Mr Maes:** Yes.

**Mr Rinaldi:** It is?

**Mr Maes:** The King and Jarvis area.

**Mr Rinaldi:** That's good. Can you just maybe explain which—certainly, it's not part of the bill right now, but your proposal for a corkage fee: \$10, and an additional \$3.50 per glass. I mean, I didn't quite get it when you were explaining it. So it would be an initial charge of \$10, and then—

**Mr Maes:** As an owner, I still have to buy glasses, I still have to employ the waiter who then washes them and serves them, who sort of like handles my dishwasher, who has to handle the glasses. Or I rent a dishwashing machine from a company where I pay a monthly fee.

Again, I don't want to have the person by himself not coming in because he has to pay more money for one bottle of wine; he could bring a smaller bottle, or something. But I also want to make sure that the amount of work done by my staff is paid for and not necessarily out of my pocket.

**Mr Rinaldi:** OK. That's good. Thank you.

**The Chair:** Thank you. Mr Martiniuk? Ms Churley?

**Ms Churley:** Where is your restaurant? Jarvis—

**Mr Maes:** At King and Jarvis.

**Ms Churley:** OK. It's always nice to know, when people come in, where their restaurant is. Now we know.

These are good recommendations. It's nice to hear from an owner of an establishment. My question is this: Some are saying the corkage fee should be regulated, others are saying it shouldn't be. I think it needs to be. I think you've got to be able to have people bringing in their own wine. You've got to find a way to be able to make that money. How is it going to work? Supposing they don't regulate it, the restaurants that choose to do this? Do you think there will be problems in terms of the competition if it's not regulated; one restaurant may not charge it at all or charge less than the other one? Is that your fear here?

**Mr Maes:** Of course. The restaurant industry is very competitive. A friend of mine is a chef at the Fifth, which is a fairly large restaurant in the city, and their price of wine averages probably about six or seven times the price of my wine. They shouldn't have to pay—it's not that they shouldn't have to, but they should have the choice of charging, for example, a \$75 corkage fee if their average wine is based at \$100 a bottle. My average wine is based at \$27 a bottle. I shouldn't have to charge \$75 a bottle to open it. I think it's very much in the sort of class of restaurants that we find ourselves, and in the amount of investment that we have done in our establishment, of course. It's up to the owners to decide, because I think it would be very, very hard for the government to say, "This is how much you charge." I would like to see this as a popular thing in the city and not as an "I can't afford it" kind of thing.

**Ms Churley:** OK. Thank you.

**The Chair:** Thank you, Ms Churley, and thank you, Mr Maes, for taking the time to address the committee.

**Mr Maes:** It's a pleasure. Thanks.

**The Chair:** The next group, I believe, was cancelled, Easy Way Accommodations Ltd.



1720

## RECTORY CAFÉ

**The Chair:** We will proceed with the next one, the Rectory Café. Would Mr Mark Samuel be around? Yes. Good afternoon, and thank you again for taking the time. You have 10 minutes, of which you could take the whole 10 minutes or leave some time for the question period at the end of your presentation.

**Mr Mark Samuel:** I have a few handouts here.

**The Chair:** OK.

**Mr Samuel:** Thank you, Mr Chair, for the opportunity to be here. It's my first time partaking in this sort of consultative process. My main industry is actually the steel industry, and being in the restaurant business is my pastime, my passion and my hobby.

The Rectory Café came into existence two years ago, out on Ward's Island. I appreciate that we probably represent the little guy in this process; we're certainly one of the smaller presenters you'll have today. We're also unique in that we are, in many ways, the outpost restaurant or organization. We're stuck over on Toronto Island, which has many logistics issues. It also has unique competitive issues: There is no other restaurant that services the community in the wintertime, and in the summertime, it's really chip shops over at Centreville and the yacht clubs.

In general, with regard to the proposed bill, we are in support of it. I have two partners in the restaurant, and we've had extensive dialogue on this. We've also talked with the community out on Ward's Island, because you don't do much on the island without involving the community. We had an art gallery opening last week and used it as an opportunity to canvass them as to whether they'd support this kind of approach.

Most of the dialogue did not focus on enforcement issues. It was more on consumer issues, as you can imagine; they're frankly a very empowered community over there. They very much like the idea of choice that the bill represents, and they could very much see themselves patronizing our restaurant to a greater extent, once they felt they could take ownership of that part of the process and also reduce their bill size in coming to us, although our wine list is really a range between \$22 and \$32, so it's not egregious anyway.

So we really believe, for the island community, that we're going to get more support out of them and more frequent visits from them, and we certainly believe we can use it as a tool on our slower nights, Monday through Friday, to add to our business and then perhaps choose not to make use of it on the weekends, when we traditionally have more volume.

Our other clientele are the tourists who come over in the summer, and it's been a frequent request of us, especially by foreign tourists, for the last couple of years: "Is this not something that you offer in this province?" They're quite surprised to hear that we don't.

In terms of more direct business aspects, other than bringing people in the door, which is obviously important

to us, the other thing that's important to us is being able to limit our costs. To some extent, if bring-your-own-wine is able to reduce the burden on us to have inventory of our own, that frees up capital within our small little business to do other things and make renovations and improve our business. So we're looking forward to that.

We're also shoehorned into a tiny little building over there, as a lot of smaller restaurants are, and storage space is at a premium. We see this freeing up storage space and, in our particular arrangement, it might also lead to a reduction of our rent. So, again, it will be a cost saving for us.

I spoke also in the brief on taking home the rest. I appreciate that's not particularly in front of us right now, but we are in support of it. The community is also in support of that—they like the flexibility that represents—and we believe it's going to encourage more responsible drinking because, at the moment, we witness every day the couple who sit at the table until the bottle is dry, as opposed to, if they had the option of taking that bottle home, they might drink one or two glasses before they left.

On corkage, we're in support of leaving the market to determine what those fees will be. I agree with the gentleman before that it really does depend on what kind of restaurant you're running and what your price list is on your wines. The market will dictate what it will bear in that area. We absolutely believe that it needs to be voluntary legislation, and giving the choice to the restaurants is the same as giving choice to the consumer. I think there will be a certain percentage that it fits—we'll happen to be one of those restaurants where it does—and for those where it doesn't, the market will decide that. Thank you.

**The Chair:** Thank you very much. We have approximately five minutes to go—you took only five minutes for your presentation—and it is up to the official opposition side: either Mr Martiniuk or Mr Yakabuski.

**Mr John Yakabuski (Renfrew-Nipissing-Pembroke):** I don't really have any questions, because you've answered the questions I would have and you're in support of taking home the rest. That's exactly what my position was. I would rather see someone taking home the rest than making sure they drank it all in the restaurant. In fact, it encourages responsible drinking.

**Mr Samuel:** In our particular situation, as I said, we are a bit of an outpost, and there are other restaurants in Ontario that are a bit of an outpost and a long way from a location where you can purchase the wine. I'm sure those communities will appreciate the opportunity to take that bottle home as well and drink it responsibly at a later date.

**The Chair:** Ms Churley?

**Ms Churley:** Your last point was a point I made earlier. Actually, I've been guilty, as I said, not of drinking and driving but of finishing off a bottle because I paid a lot of money for it. I think it's human nature, if you've just spent a bunch of money, that you don't want to waste anything you used that money for. So I think that, in a sense, is a very positive thing. I could see myself doing that.



The question for me—you've made a very compelling case why this is a good idea—is again on the corkage fee. You have no competition on the island. In fact, I think there have been occasions where people—I have friends over there—have run out of wine at home and then have to come to your place to get a bottle. You say it should be left up to the restaurants to determine themselves. Can you see—it wouldn't happen to you—in some situations where it's voluntary, where those who can afford to take a bit of a loss on that could have some advantages over some of the smaller restaurants that would have to charge a substantive corkage fee to be able to make a reasonable profit?

**Mr Samuel:** Well, it really goes back to the philosophy of the free market. I really believe that the market will determine what you can get away with in terms of pricing your food, your non-alcoholic and your alcoholic, and it always has. It's no different what composite price we put on our price list today versus what we offer as a corkage fee going forward.

**Ms Churley:** Do you have employees?

**Mr Samuel:** We're very seasonal, according to how many people choose to cross that little water barrier between us and the mainland. We have five in the winter and 46 in the summer.

**Ms Churley:** How do you deal with the concerns that have been expressed here by representatives of the workers about how the minimum wage is very low and concerns about what happens to the tips for them?

**Mr Samuel:** I'm glad you raised that. I don't believe the tips would necessarily be an issue. I think that servers are a very empowered group who know how to speak their mind and how to dialogue with management. They're not an oppressed group by any means. They vote with their feet, and if they're not happy with the circumstances they have at your restaurant, they tend to go elsewhere—unfortunately rather quickly. So I think an arrangement would be made.

I'd be interested to see what comes forward with the bill, if there are any recommendations in that area. But absent that, it would generate a dialogue between management and employees, and there would be some determination of revenue-sharing, either of the corkage fee directly or some other mechanism.

**The Chair:** I have time for one question from the government side.

**Ms Matthews:** I don't really have a question, but I want to thank you for this presentation, and I would like to suggest to the Chair, although I know this is not a travelling committee, that I think we perhaps ought to travel to the restaurants that have been represented here today. So let me just make that recommendation to the Chair.

**The Chair:** And bring your own bottle.

**Mr Samuel:** We have a cozy fireplace too.

**Ms Matthews:** I just think we could do our job better if we were able to see these things first-hand.

**Mr Samuel:** Well, we welcome the committee to join us at any time over at the Rectory. Our doors are always open for you.

**The Chair:** Thank you, Ms Matthews, and thank you, Mr Samuel, for your presentation. I appreciate it very much.

**Mr Samuel:** Thank you, Chair. Thank you all.

1730

## ONTARIO COMMUNITY COUNCIL ON IMPAIRED DRIVING

**The Chair:** Has the group from the Kitchener Downtown Business Association arrived yet? They haven't? We'll go to the next one, the Ontario Community Council on Impaired Driving. We have two persons: Anne Leonard, executive director; and Shelley Timms. Before you proceed, if you could give your name for the record.

**Ms Shelley Timms:** Good afternoon. I'm Shelley Timms, and I am chair of the education committee for OCCID, as we call it more simply.

**The Chair:** Welcome to the committee.

**Ms Anne Leonard:** I'm Anne Leonard. I'm executive director for the Ontario Community Council on Impaired Driving. I'm just here to support Shelley.

**The Chair:** Welcome to you too.

**Ms Timms:** Thank you to all the members for hearing us. We are a group of stakeholders and community partners. The goal is prevention and education initiatives to eradicate drunk driving, to prevent injuries and to save lives in Ontario.

By way of background, our education committee reviewed the Liquor Licence Act in the spring of 2004, particularly after the BYOW initiative was introduced in March. We had a few concerns at that time, and we were concerned as to whether or not it would include homemade wines, where the BYOW would take place, training issues of servers, and the number of bottles per party.

We sent a letter to Minister Watson on June 10, 2004; a copy is attached for your review. We raised these concerns as well as some other gaps we noticed in the Liquor Licence Act, which included the lack of insurance as a condition on the licence, as well as whole-bottle purchases. We also had an opportunity to meet with Minister Watson in June 2004.

With respect to Bill 96, particularly dealing with the BYOW aspect, we're pleased to see that it's limited to existing licences, in particular restaurants, because it is our understanding that it is limited to restaurants. This allows that servers will be trained, Smart Serve particularly, but in any other kind of server training, which is essential in this situation.

We're satisfied that it's limited to commercial wines, but we have to note that our stakeholders are concerned regarding the perception that it will be less expensive to purchase wine because it will be BYOW and that some people might drink more. We note that are corkage fees, but we suggest that there has to be an education and an awareness campaign so the public understands that this is about choice and not about cost.



With respect to the take-home-the-rest aspect, this encourages people to stop drinking if they know they can take home the bottle. We are pleased to see that; it applies directly to our mandate. It's good that it applies to BYOW as well as restaurant purchases, so we're pleased to see that as well. The best option, we have to say, is that drinking and driving should not be combined, but this is a step in the right direction.

It's very important, however, that there is a public campaign on safe and legal transportation of alcohol. Many people are not aware of how they are supposed to transport their alcohol at this point, and it's essential that that campaign is brought out, both for motorized vehicles and watercraft.

With respect to the enforcement issues, the increased provisions are also a step in the right direction. However, we have to state that there are more resources needed. I'm sure this committee doesn't want to hear about more resources needed, but it's true. There are more inspectors needed, and better training. At this time, we have very inconsistent inspections. If you were to listen to the anecdotes from across this province, you would see that some say they have a great relationship with their liquor inspector, some never see their liquor inspector, and some have a terrible relationship with their inspector. We are suggesting that there has to be increased and better training so that there is consistency across the board.

With respect to the fact that it could be an arrestable offence to refuse to leave if asked, we support that. However—and I don't have the answers for you today—what happens to the person once they do leave needs to be considered. I ask you to remember that last spring a gentleman was essentially tossed out of a bar in Toronto and froze to death literally feet from the front door of that particular bar. That is a concern that has to be addressed. One possible aspect of it is safe transportation policies.

We also understand that there is going to be an ongoing review of the Liquor Licence Act, and we want to address the issue of insurance not being a condition of licence at this time. We strongly encourage that. If everyone remembers, there was the case of the Hunt and Sutton Group that occurred in Barrie some three or four years ago that achieved a lot of publicity at the time. It involved a woman who was working for her employer at a wine and cheese Christmas party and who was ultimately involved in a crash and suffered a brain injury. It became apparent, as the trial went on, that a pub was also a co-defendant in that particular action—she had gone to the pub after the Christmas party—but that pub was both bankrupt and without insurance.

It is a privilege to hold a liquor licence in this province. They're involved in a substance that alters and impairs judgment and perception, and an intoxicated person is a risk to himself or herself as well as to innocent third parties, particularly if they're driving. Licensed establishments benefit from the sale of alcohol and therefore, we submit, have a huge responsibility.

There are other examples of mandatory insurance in this province, particularly the compulsory automobile insurance act, as well as professional insurance being

required by such groups as lawyers, doctors and accountants. So over the course of the review, we strongly urge that this particular aspect be remedied.

We've also addressed very briefly the whole-bottle purchases in our letter. In some situations, we've noted, particularly nightclubs in downtown Toronto, a group can buy an entire bottle of scotch or brandy and serve it themselves. The server is not involved in the service of this whole bottle. As a result, it's impossible to track and monitor, which is an obligation, as supported under Smart Serve. It's impossible to know how many people are drinking what drinks. We would ask that that gap also be remedied.

I think that covers all of our submissions. We thank you for the time.

**The Chair:** Thank you. We have nine minutes left; I will give three minutes to each party. It is up to the NDP.

**Ms Churley:** Thank you for your presentation. It's good that your group and MADD came forward, because of course we're all having a lot of fun with this issue, and you remind us that although a majority of people drink responsibly and a majority of owners serve responsibly, we know all too well that there are those who abuse this substance and cause a lot of damage and pain. It's important for us to remember that during this discussion.

I don't think I have any questions for you, other than to ask if you have been invited—you've met with the minister—to participate in the writing of the regulations for this bill, which are to follow, but also for further changes to the Liquor Licence Act.

**Ms Timms:** We've not yet been invited, but we have developed a relationship and are having ongoing discussions.

**Ms Churley:** Good. Thank you very much.

**The Chair:** Does the government side have a question? Mr Duguid.

**Mr Duguid:** I don't have a specific question in mind, just to thank you again for being here today. We agree on most of the points you've raised, if not all of them, I think.

The issue you raised about insurance is an intriguing one to me. I haven't heard that raised before. You've mentioned one case. You do say in your submission that you are not aware of others but there may well be others out there. I would really appreciate it if you'd bring that forward when we do move forward with the review. It surprises me that there's not a requirement that they have insurance.

**Ms Timms:** Frankly, it surprised me when I discovered it as well.

**Mr McMeekin:** First of all, my apologies. I got called out to discuss another piece of legislation at cabinet committee. It had lost quorum, which is why I had to be there.

I just want to thank OCCID for their presentation. I had the good fortune, as the parliamentary assistant, to spend about five hours with your group one evening, listening to the concerns and making some pretty copious notes. So you are indeed correct: We are listening very

carefully, with a view to building on the relationship we have, and really appreciate the invitation, as well as the good input and, most important, the wonderful work you're doing in Ontario. Thank you.

**The Chair:** Any further questions from the government side? If none, Mr Yakabuski?

**Mr Yakabuski:** I too want to commend you on the fine work you do in educating people about the problems associated with impaired driving and all that that creates. I also appreciate the submissions you have made. Hopefully, as these regulations get drawn, groups such as yourself—and I'm sure they will, because I think we need to have a cross-section of people involved in drafting these regulations to ensure that a balance is found. So

far, I think it's been pretty good, but I think there's work to be done and I hope you'll be part of it. Thank you very much.

**The Chair:** Thank you, Mr Yakabuski.

Again, ladies, we really appreciate the time you have taken to come and address the group. All those presentations or submissions are recorded, and they will appear in the Hansard of the committee.

That is the end of our presentations today. I want to remind the committee that we will proceed with the clause-by-clause on Wednesday, December 8, immediately after routine proceedings. This meeting is now adjourned.

*The committee adjourned at 1741.*



# CONTENTS

Monday 6 December 2004

<b>Liquor Licence Amendment Act, 2004, Bill 96, Mr Watson / Loi de 2004 modifiant la Loi sur les permis d'alcool, projet de loi 96, M. Watson.....</b>	<b>G-561</b>
MADD Canada.....	G-561
Mr Andrew Murie	
UNITE HERE Ontario Council, Local 75.....	G-563
Mr Paul Clifford	
Ontario Restaurant Hotel and Motel Association .....	G-565
Mr Terry Mundell	
Ontario Association of Chiefs of Police, alcohol and gaming committee.....	G-567
Mr Rob Shaw	
Spadina/Queen/Peter/Richmond Community Association and King-Spadina Residents' Association .....	G-569
Ms Liz Sauter	
Mr Wayne Scott	
Ms Rose Bayer	
Mr Don Rodbard	
Petit Dejeuner.....	G-572
Mr Johan Maes	
Rectory Café .....	G-574
Mr Mark Samuel	
Ontario Community Council on Impaired Driving.....	G-575
Ms Shelley Timms	
Ms Anne Leonard	

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## Legislative Assembly of Ontario

First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 8 December 2004

# Journal des débats (Hansard)

Mercredi 8 décembre 2004

## Standing committee on general government

Liquor Licence  
Amendment Act, 2004

## Comité permanent des affaires gouvernementales

Loi de 2004 modifiant la Loi  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 8 December 2004

Mercredi 8 décembre 2004

*The committee met at 1558 in room 151.*LIQUOR LICENCE  
AMENDMENT ACT, 2004  
LOI DE 2004 MODIFIANT LA LOI  
SUR LES PERMIS D'ALCOOL

Consideration of Bill 96, An Act to amend the Liquor Licence Act / Projet de loi 96, Loi modifiant la Loi sur les permis d'alcool.

**The Chair (Mr Jean-Marc Lalonde):** I call this meeting to order. Pursuant to standing order 78, are there any comments, questions or amendments to any sections of the bill and, if so, to which section? Any questions or comments?

Seeing none, shall sections 1 to 3 carry? In favour? Against? Carried.

I believe we have an amendment to section 4. I would ask the PA, Mr Ted McMeekin, to read this amendment.

**Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot):** I move that subsection 34.1(1.1) of the Liquor Licence Act, as set out in section 4 of the bill, be amended,

(a) by striking out "licensed premises" in clause (a) and substituting "the premises"; and

(b) by striking out "licensed" in clause (b).

**The Chair:** Would there be any comments or questions?

**Mr Peter Kormos (Niagara Centre):** Section 3, which just passed unamended, speaks of:

"No person shall,

"(a) remain on licensed premises after being required to vacate the premises...."

Now section 4 of the bill is being amended. Rather than having consistent language—"remain on licensed premises after being required to vacate the premises"—it appears to be saying, in effect, "remain on the premises after being required to vacate the premises."

I suppose the natural question is, why?

**Mr McMeekin:** Why the amendment or why the inconsistency?

**Mr Kormos:** First, why the amendment?

**Mr McMeekin:** If you like, Mr Chairman, I'll try to answer that.

**The Chair:** Certainly, Mr McMeekin.

**Mr McMeekin:** The police don't want to have their powers limited only to licensed facilities. There are in

fact other kinds of premises. Mr Rae, when he was out—I don't know if you were here, Mr Kormos, when he spoke at some length about some other facilities that would specifically apply: after-hours clubs, what they call booze-can clubs etc. These are particularly difficult for the police because they don't have any authority or jurisdiction at this point.

The lamentable situation is that sometimes acts of violence or worse occur in these clubs. It's been exceptionally problematic in certain neighbourhoods. Mr Rae spoke eloquently to that.

Based on that intervention and the intervention of the Police Association of Ontario and others, we felt it was absolutely incumbent upon us to bring forward this amendment, which, by the way, has been checked out with legal counsel and thought to be quite appropriately in place, as amended.

**Mr Kormos:** As a matter of fact, I did read the Hansard of Councillor Rae's submissions, the exchanges he had with members of the committee and his observations about various types of premises—the second-floor phenomenon *inter alia*. But then I'm concerned about what jurisdiction the province has—you've got to help, I suppose, over on this side of the room—in terms of the Liquor Licence Act and unlicensed premises other than a premise upon which liquor is being served in which there's an inherent jurisdiction—right?—because of the Liquor Licence Act, and it's unlicensed. That, in and of itself, gives the police jurisdiction or gives the state jurisdiction to intervene, as compared, let's say, to a private home that isn't being run as a commercial operation. Are we to conclude that "premises" as you've described it only applies to premises to which the Liquor Licence Act would apply? Because, although they are not licensed premises, it's premises upon which alcohol is being served in a commercial way.

**Mr McMeekin:** That's a legal question.

**The Chair:** Can we get someone from the ministry to answer?

**Mr Kormos:** If I could hear the answer and, depending on the answer, maybe it's sufficient, or perhaps just one or two more inquiries.

**The Chair:** Do you want to state your name?

**Ms Rosemary Logan:** Rosemary Logan, counsel to the Ministry of Consumer and Business Services. How this comes into play is that section 34.1, as it currently exists, already gives the police the power to clear



premises that are not licensed where there's a violation of the Liquor Licence Act or regulations. So it does pull it in in the way Mr Kormos suggested. This additional subsection will just give them the authority to not let the people come back when they've been asked to leave.

**Mr Kormos:** In that regard, are sections 3 and 4 of the bill basically parallel worlds—one, as it applies to licensed premises and the authority the police have or the jurisdiction the province requires because they are licensed, and the other, that totally different but parallel world of places that are not licensed in which offences are occurring?

**Ms Logan:** Yes, that's correct.

**Mr Kormos:** And it's as simple as that?

**Ms Logan:** Yes.

**Mr Kormos:** I'm saying that because I'm obviously concerned, perhaps inappropriately, about the power to clear premises being used by police—and I'm not going to enumerate the possibilities—for instance, to vacate premises, let's say in the context of—was it raves that were preoccupying people a couple of years ago, where there wasn't alcohol being served but ecstasy and various drugs like that that were being utilized? Surely the Liquor Licence Act doesn't purport—no, that's a bad example, because nobody is going to necessarily object to the police clearing a place where people are illegally using drugs. You understand what I'm saying? Places where people might gather that constitute a nuisance to the neighbours but it not being a licensed place, of course, and not being a place where liquor licence offences are being committed, other people and I might want assurance that there's nothing here that's going to give police power in addition to what you intend to give them in terms of their being able to go to—I don't know, I'm trying to think of a rather banal example like a bingo hall or a prom. A prom: Isn't that so wonderfully 1950s and so benign? A prom or things like that; I want assurance there's nothing here that is going to give the police the authority to regard those as premises for the purpose of clearing them under the Liquor Licence Act.

**Ms Logan:** It's only for situations where there's a violation of the Liquor Licence Act, and it's just intended to allow them to effectively carry out the authority they already have in part under section 34.1 to clear premises.

**Mr Kormos:** Thank you kindly.

**The Chair:** Any other questions or comments? Seeing there are no more questions or comments, those in favour of the amendment submitted by the government? Against? Seeing none, it is carried.

Shall section 4, as amended, carry? Carried.

Moving on to section 5 through section 7, shall these three sections carry? They are carried.

Shall the title of the bill carry? It is carried.

Shall Bill 96, as amended, carry? Carried.

Shall I report the bill, as amended, to the House?

I have one question. Mr Kormos?

**Mr Kormos:** Not a question but some comments. I want to make it clear that I'm not supporting the legislation. I recognize that there were participants by way of

public input that covered the map—no two ways about it. I also appreciate the references to, let's say, Montreal and indeed some references to other jurisdictions—Australia among others—where people talked about what a wonderful experience they had buying their wine and taking it to the restaurant with them. However, I want to pay specific attention to the submissions by Mothers Against Drunk Driving and UNITE HERE, the hotel and restaurant employees union.

I'm not suggesting that anybody, for instance, by supporting the bill, holds Mothers Against Drunk Driving in any less regard than anybody else. I'm not suggesting that at all. I hold them in high regard. They have fought a very difficult fight, but in the course of fighting, they have changed public opinion; they really have. You and I are old enough, Chair, to understand exactly what that means in terms of changing public opinion about drunk driving. Regrettably, it seems to me, when you look at what's going on out there, that the message may well have been absorbed by our generation but still not quite as thoroughly absorbed by younger generations, and that's incredibly regrettable because of the huge costs that drunk driving tolls in terms of lives and injuries. I give great weight to the comments of Mothers Against Drunk Driving and their very simplistic observation that the greater access you provide and the lower the cost of the alcohol, the more consumption there is going to be. End of story. I don't think that's refuted by anybody.

That causes me concern. Again, my concern is, who is crying out for this legislation? I know that some elements in the hospitality industry say this is going to improve the strength of that sector, which was hard hit by SARS and now by the rising Canadian dollar. I go to Montreal as often as I can, and the first couple of times I went there I went to Prince Arthur and bought the cheap bottle of wine at the dépanneur and took it to the restaurant. I soon realized this was no big deal, because the reason you had the little corner stores right there on Prince Arthur—it was restricted to the one area. Quite frankly, I didn't go to Montreal in the first place because of the fact you could bring your own wine; I go for either Moishe's or Schwartz's. I'd think twice about going to Montreal—or Wolensky's, with the pressed salami sandwiches, quite a ways up on the northeast corner of the mountain. I don't go to Montreal because of bring-your-own-wine; I'm hard-pressed to just anecdotally think that there's anybody who goes to Montreal because of the bring-your-own-wine phenomenon. The fact is, I acknowledge, that most of Montreal is into the bring-your-own-wine jurisdiction. I don't think that bring-your-own-wine is going to be a compelling marketing device for tourists to come to either Toronto or Ontario. I don't think that bring-your-own-wine is going to be in any way an enticement for people to come to this jurisdiction. So I don't agree with the proposition that this is going to have an incredible impact on that hard-hit hospitality service industry.

1610

The other observations to which I give great weight are the submissions by UNITE HERE. I specifically refer



to the very specific statement by Paul Clifford, president of Local 75 of UNITE HERE, where he notes that there are "8,500 hospitality workers in racetracks, hotels, restaurants, bars and foodservice establishments in the GTA, Windsor, Niagara Falls"—Niagara area, where I come from—"and elsewhere. UNITE HERE has a total of 20,000 members throughout Ontario.

"In widespread discussion with our members and with non-union food and beverage service workers, I have not met a single one who favours this legislation."

Mr Clifford also, on behalf of his membership, notes what I've had occasion to observe, that 15% of a corkage fee is a lot less than 15% of a \$30 or \$40 or \$50 bottle of wine. Those servers, those women and men who work incredibly hard, earning destitution wages—they really do. Their hourly wage is insignificant—almost, dare I say it, irrelevant; they work for tips. I'm not saying that's the way it should be; I'm just saying that's the reality. I can't help but join with Mr Clifford in his observation that the phenomenon of bring-your-own-wine—and I'll talk about how widespread it could become—is not in any way beneficial to servers, but for the argument that, "If people can bring their own wine, they will go out more frequently to restaurants."

I don't know. I had dinner at a reasonably upscale steak house last night and was disappointed at the number of people who were there. In observing the people who were there, I didn't see them as the types who would determine whether or not to go to Bigliardi's dependent upon whether or not George would let them bring their own bottle of cheap wine. It's not that kind of market and, quite frankly—dare I say it—I suspect, though I can't say I've ever participated or been personal witness to it, that in a whole lot of good eating places, if a regular customer wants to bring a very special bottle of wine that he or she may have acquired through one of these wine clubs or picked up on a junket to Europe, it happens from time to time, and nobody is the worse for wear.

So I have to give effect to the observations made by UNITE HERE on behalf of their membership. I note that there isn't, and they point out that there isn't, a specific reference to a corkage fee in people's response. In the committee hearings as well, that's assumed. But there is no regulation of the amount of the corkage fee. Their suggestion that the whole corkage fee should belong to the server I think is a wonderful one, because it's the server who's doing the uncorking.

I also note that they are emphatic that the province should respond to the concerns of service workers. Service workers, servers, are getting ripped off for their tips across this province. I became aware during the Hilton Toronto Airport strike by those workers that when customers are going to the Airport Hilton—and I tell you, it's not a unique practice; other operators do a similar thing. When a large group, for instance, has a banquet in the banquet hall—I made reference to this in the chamber—and they see the 15% service charge, the people who are buying dinner for 100, 200, 300 people, wedding receptions, sports receptions, sign the cheque with the

15% service charge assuming that that's the tip, so nobody bothers passing the basket. In small-town Ontario, down in the Legion Hall or at the Lions Club or at the Slovak Hall, you're liable to see the breadbasket being passed around. Everybody throws in a loonie or two, and this is for the folks in the kitchen and the servers. But in commercial places, the people sign the tab saying "15% service charge." I was shocked to learn that Airport Hilton workers did not get that service charge, even though everybody who was signing the tab, logically, irrefutably, presumed that that was in lieu of tip and that was going to the workers.

So the second point that Paul Clifford made to this committee, as you'll remember, was a guarantee that the corkage fee is the property of the servers and no one else. That's a reflection of and grows from their concern about how workers in this industry are getting ripped off for tips.

I'm also aware of how workers in other establishments in this province are forced to pool their tips, which is fair enough. But then the employer—these are cash tips; this isn't the 15% service charge. You pool them so that your coworkers in the kitchen and in the back end can get their share of tips, and the busboys and busgirls—buspeople? You also have employers who are taking 50% of those, believe it or not. We don't have any protection in this province to protect the tips, the gratuities, of servers and other restaurant service industry workers.

I'm opposing the bill. I'm voting against it here and in the chamber. I'm not sure it's the panacea that its advocates say it's going to be.

Do the majority of Ontarians favour the bill or oppose the bill? The majority of Ontarians probably don't really care, in the total scheme of things. This hasn't been prominent on the radar screen; I have no hesitation in saying that. In the government's focus groups, I can just instinctively presume that when the prospect of bring-your-own-wine is brought up in a focus group, a whole lot of people say, "Hey, that sounds like a good idea," or, "Hey, that sounds like a good idea because it was a lot of fun to do it when I was over on Prince Arthur Street in Montreal. We got really drunk up on the cheap wine, but we weren't driving because of course we were close to the hotel district. We had a great time; it was a wonderful occasion." So I suspect that in the government's focus groups, if and when bring-your-own-wine has been brought up, nobody has rallied against it because, at first blush, it seems like fairly innocuous legislation. Having said that, this is no way to develop reform around the service industry, around the hospitality industry and around Liquor Licence Act reform—piecemeal like this.

Already we've got beer, wine and spirits in corner stores; we do. This government did what, as I recall, the Liberal government of 1987 to 1990 didn't dare do. We've got beer and wine in corner stores. Drive down Highway 24 in Vineland; there's the Avondale with the LCBO sign right beside it, and then the Beer Store sign right beside the LCBO. This is under the guise of these



tourist stores. This is in Vineland, where, I agree, people are on tour, but they're travelling Highway 8 and visiting the wineries. I just find it rather peculiar. So we've got beer and wine in corner stores. Again, if that was part of the agenda—and I'm not sure it was; it was sneaked in through the back door—then create a package and let's debate that and let's see what public response is to it.

As I say, there's been nobody protesting out in front of Queen's Park, saying, "Don't pass bring-your-own-wine legislation," but the concerns expressed on the part of those workers, the concerns expressed on the part of MADD, and the anecdotal input of Webers, for instance, or any other number of restaurateurs—because many of them have said, "Yeah, we'll participate," or, "We don't care because it's optional," and I agree with that. "We don't care; it's optional." As many of them as have said, "Yeah, we'll participate," or, "We don't care because it's optional and we may or may not do it," have said, "No, we don't think it's a good idea."

The other observation is that the restaurant industry—and you take a look at the food you buy and eat in most restaurants, whether it's upscale or downscale—works with a very, very tight profit margin. Take a look at the turnover and survival of restaurants. It's a tough, tough business; it's a tough industry. Millions of dollars are lost every year by entrepreneurs who go into the restaurant industry, especially in the big city of Toronto, where the demands and the standards that you have to meet are very high. It's a tough industry. The profit margins on the food alone are marginal—I guess that's why they're margins; are minimal.

1620

Restaurateurs will tell you that they've been whacked by increased electricity costs, and they could be whacked by increased heating costs this winter. Most restaurateurs candidly will tell you that they make their money on the spirits. That's why the waiter wants you to have that pre-dinner drink. That's why the waitress wants you to have the Grand Marnier after dinner, along with the dessert. The dessert is another big markup item—or the appetizers, the escargots. It's incredible: eight or nine bucks for a little plate of escargots, and really all you want is the garlic-flavoured butter. You can buy a tin of those escargots over at Pusateri's for \$4.99. But don't put them in a microwave, because they explode like popcorn. You've got to put them under the broiler. Again, this is where restaurants make their money.

I'm not denigrating the people who are going to support the bill. I suspect the bill will pass. I hope it doesn't cause grievous harm, but I'm not sure it's going to do any positive good, especially in contrast to the impact on the phenomenon of drunk driving and overconsumption of booze and on those workers.

**The Chair:** Mr Martiniuk, do you have comments or questions?

**Mr Gerry Martiniuk (Cambridge):** Yes, Chair. I won't bore you with my culinary travels, but I'd like to address three matters. I know MADD has credibility with all of us and it obviously is a concern when they point

out what they consider the flaw in the reasoning in regard to this bill, that it could cause higher consumption and, therefore, possible deaths on the road. That's always to be taken into account.

Second, I think the government has made a mistake in not dealing with the whole package of the reform of the Liquor Licence Act. I believe that the service and use of liquor as a drug in our society must be governed by government. I think this bill should have been dealt with as part of the total reform. That has not been done and I'm afraid that it therefore suffers for it.

Last, I take particular exception to section 2 of the bill dealing with the suspension of licence, which traditionally has been done by two individuals who are appointed and trained as quasi-judicial officers, hearing evidence. The case was usually prosecuted—if I may use that word in the informal sense—by the registrar. Now we are removing the two appointed officials acting in a quasi-judicial matter and we are going to take the prosecutor, who is the registrar, and he is now to hear the evidence and make, I assume, a quasi-judicial determination on his own evidence. I think this sets a dangerous precedent.

I understand the police testimony. They wanted more expedition, and there are sometimes difficulties on their jobs. There are always difficulties on our jobs. That's no reason to take away persons' rights without due process, and I believe that this section may do so.

**Mr McMeekin:** I suspect that Mr Kormos is right when he says that there is very little opposition to the bill. He's certainly right when he indicates that no one is lining up on the lawns of Queen's Park to articulate their cogent opposition to it. In fact, I want to suggest here today that our experience has been quite the opposite. We've had a number of people—very credible people—come forward. Even the couple who were in opposition articulated some good points worth looking at.

The particular angst of Mothers Against Drunk Driving—and we concur—was that the proposed overall review of the Liquor Licence Act is not happening as quickly as they'd like. We, frankly, had anticipated that the previous government, which put the advisory group in place, would have moved on that. That didn't happen, and as a result, when we came to government—we weren't wandering around the halls at Queen's Park wondering what needed to happen—we looked at those things that were ready to move forward, and we're pushing ahead with those, to widespread applause, I want to suggest, particularly from police and community perspectives. We have undertaken to give a covenant to look specifically at the Liquor Licence Act and do a comprehensive and very necessary review of that, which will be commencing in the new year. We've talked about that, Mr Chairman, so that needs to be put on the record.

The other thing that I think needs to be said is that this government isn't prepared to let excellence become the enemy of the good. We're anxious to move ahead with those provisions that make patent good sense. This bill is an effort to balance what we think are progressive

reforms. We've heard, virtually universally, from those who have come out to make representation and those who have taken the time to comment publicly to us, that they want to see these progressive reforms made. But we've not only done that; we've tried to balance that with public safety.

I think we would be remiss if we didn't specifically flag the very noble efforts on the part of the police community, whose obligation is to serve and protect and who have a vested interest in ensuring that violence doesn't occur at clubs. They said, with respect to the provisions to remove licences, that these are an absolutely necessary avenue, that some of the violent acts that occur at some premises could recur if people returned to the site and/or the environment which creates that very explosive situation is allowed to continue. They spoke very well to that.

I just want to recall for members of the committee—I know we have a while before the vote takes place in the House—that Bruce Miller said, “Bill 96 would implement several changes that would have a positive impact on community safety.” He's speaking on behalf of the Police Association of Ontario. I think that's important. I think the Police Association of Ontario, you know, all those who have the obligation, like the Ontario Association of Chiefs of Police, who also came out and spoke quite positively about the bill—we have an obligation to listen to them when they talk about public safety; when they talk about the necessary provisions that, to date, have been absent; when they come forward to courageously commend a government, any government—this government happens to be the government they're commending—for taking the action they've been calling for for years. Going back to Bruce Miller, “We believe that any concerns over the bring-your-own-wine proposal can be addressed through consultation and adequate regulations.” I think that's significant.

We heard from Kyle Rae, the local councillor, whom I referenced earlier. We heard from Taxiguy. He was a fascinating individual who came forward with some insights and with a passion that was unmistakable, a concern about public safety. Here's a man who, I suspect, has invested considerable amounts of his own resources, with a fundamental philosophy about protecting public safety, coming forward and saying he wants to stand with the government.

Mr Martiniuk's colleague Tim Hudak, who was the Minister of Consumer and Business Services, is on record as saying, “I'm in favour of bring-your-own. Let's look at best practices. I think it's good for consumers and good for tourism.” His northern colleague—is Muskoka still in the north or not; I'm not sure—Norm Miller said, “I support this idea and voiced the opinion when I participated in the minister's liquor licence advisory committee last year. I believe that the general public will support allowing more flexibility in the rules regarding wine in restaurants. I also believe that the choice of taking a part bottle of wine home promotes a more responsible consumption of wine.”

1630

Not only do your two colleagues believe that, sir, but the Police Association of Ontario, the chiefs of police and many others have come forward and said that not only is it progressive but prudently responsible, long overdue and the kind of protection that Ontario residents deserve.

On the issue of employees and such, I think I shared my own penchant at an earlier meeting of the committee. I have a daughter who goes to McGill, and we avail ourselves of the bring-your-own-wine provision there. I'm very conscious, as a participant in that program, of my obligation to those who serve well—I don't automatically tip everybody—the obligation to make sure that they're—

*Interjection.*

**Mr McMeekin:** Well, I have a daughter who works in the service industry, so I'm one of those guys who tips 25%, 30%. I think that's important to do. It's a matter of education. Tipping is a voluntary act, and there are some pretty silly, boring people out there who don't understand the importance of good service and, sadly, walk out of restaurants without affirming the good service that's been given by our brothers and sisters, unionized and otherwise, who are there serving.

It's an ongoing education. In fact, Mr Seiling, who was here on behalf of the Greater Toronto Hotel Association, spoke quite eloquently to the need to be engaged with the workers who are, in turn, engaged with the service industry around providing some assurance that this would not necessarily be to their disadvantage.

He also noted, I think appropriately, that it is a voluntary program. He talked a bit about competition and business and how he thought there would be perhaps small numbers taking up the option. I think our experience in other jurisdictions shows that between 5% and 6% actually avail themselves of the option. That too is voluntary. There will be business decisions around that. That will be subject to worker-employer discussions, I'm sure, and I don't think we want to intervene in that directly. I don't think there's anybody in this committee room who would be saying the government should be inflicting itself on employer-employee discussions with respect to that.

We're trying to balance progressive reforms with enhanced public safety. There is widespread evidential support that that's exactly what this bill accomplishes. There's the longitudinal commitment to more comprehensive reform of the Liquor Licence Act, which this government, unlike the previous government, is prepared to entertain and move forward with. All in all, I think the minister and the staff, who have engaged themselves tirelessly in this process and have invited all kinds of comment, have been rewarded with comment, and the changes that they've made, and that we together have struggled to make, and the change we made today, augur well for Ontarians for some time to come, and we'll get on with the comprehensive reform we need.

On behalf of the government, those are some comments I would make with respect to this bill.



**The Chair:** We will now proceed with voting that I report the bill, as amended, to the House.

**Mr Kormos:** Recorded vote.

**The Chair:** A recorded vote has been requested.

**Ayes**

Dhillon, McMeekin, Qadri, Rinaldi.

**Nays**

Kormos, Martiniuk.

**The Chair:** It is carried.

This concludes the clause-by-clause session, and I will report the bill, as amended, to the House.

I want to thank every one of you for your co-operation. I believe that since Monday I have faxed to every member copies of letters I received, just for information. One of the letters was from the Ottawa-Gatineau restaurant association, supporting this bill.

Thank you very much, gentlemen. This meeting is adjourned.

*The committee adjourned at 1635.*











## CONTENTS

Wednesday 8 December 2004

<b>Liquor Licence Amendment Act, 2004, Bill 96, <i>Mr Watson</i> / <b>Loi de 2004 modifiant la Loi sur les permis d'alcool, projet de loi 96, <i>M. Watson</i></b>.....</b>	G-579
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G-25

G-25

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First Session, 38<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 38<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 15 December 2004

# Journal des débats (Hansard)

Mercredi 15 décembre 2004

Standing committee on  
general government

Organization

Comité permanent des  
affaires gouvernementales

Organisation



Chair: Linda Jeffrey  
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## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 15 December 2004

Mercredi 15 décembre 2004

*The committee met at 1638 in room 151.*

## ELECTION OF CHAIR

**The Vice-Chair (Mr Vic Dhillon):** Honourable members, it's my duty to call upon you to elect a Chair. Are there any nominations?

**Mr Lou Rinaldi (Northumberland):** I would like to nominate my friend to the left, Mrs Jeffrey, as Chair.

**The Vice-Chair:** Is there anybody to second that?

**Mr Jerry J. Ouellette (Oshawa):** I'll second that, Chair.

**The Vice-Chair:** Are there any other nominations? There being no further nominations, I declare the nominations closed and Mrs Jeffrey elected as Chair of the committee.

**The Chair (Mrs Linda Jeffrey):** Thank you. I think our only order of business is to have a subcommittee meeting; if we could have a subcommittee meeting immediately following this meeting to deal with Bill 135.

**Mr Ouellette:** First of all, I wish you all the best in your ascension to the Chair position. I'm sure the able

research and the clerk's office will be of great assistance in all your activities.

I'd also like to wish the previous Chair, Mr Lalonde, all the best during the shuffle and hope things go well for him in the future.

**The Chair:** Any other business?

**Ms Deborah Matthews (London North Centre):** Will you be discussing the schedule of hearings?

**The Chair:** Yes. That's what the subcommittee meeting is about.

**Ms Matthews:** Any idea when you will know when we will be hitting the road?

**The Chair:** The dates that I have currently that we will be discussing—

**Ms Matthews:** No; just when we'll know.

**The Chair:** Shortly.

**Ms Matthews:** Before Christmas?

**The Chair:** Yes; absolutely before Christmas.

OK. We're adjourned.

*The committee adjourned at 1640.*



## CONTENTS

Wednesday 15 December 2004

Organization ..... G-585

### STANDING COMMITTEE ON GENERAL GOVERNMENT

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